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STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, JULY 10, 1985

1:40 P.M.

25 Reported by:

26 Evelyn Mizak
27 Shorthand Reporter
28

APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice-Chairman

SENATOR JOHN DOOLITTLE

SENATOR MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

WILLIAM T. BAGLEY, Member,
Public Utilities Commission

MARILYN GRAVES, Chair,
Rehabilitation Appeals Board

WARREN D. NOTEWARE, Member,
State Energy Resources and Conservation Commission

STANLEY CUBANSKI, Chief Deputy Director,
Department of Health Services

JACK LYALL
California State Employees' Association

PETER SCHILLA
Western Center on Law and Poverty, Inc.

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P R O C E E D I N G S

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CHAIRMAN ROBERTI: Governor's Appointees, William T. Bagley, Member of the Public Utilities Commission.

We know all about you.

SENATOR CRAVEN: Try to overlook that and listen as fairly as you can.

CHAIRMAN ROBERTI: Senator Craven moves Mr. Bagley's confirmation on the PUC.

Any opposition?

Secretary will call the roll.

SECRETARY WEBB: Senator Doolittle. Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is four to nothing; confirmation is recommended.

How many years is this?

MR. BAGLEY: I'll never tell, and I'm quitting as soon as I can, but I thank you, sir.

CHAIRMAN ROBERTI: You're welcome.

Marilyn Graves, Chair of the Rehabilitation Appeals Board.

1 Ms. Graves, please come forward. We'll ask you what we
2 ask almost all the Governor's Appointees -- Mr. Bagley's been
3 before us for the very same position, so that's why he got off a
4 little easy -- and that is why you feel you're qualified to
5 assume this position.

6 MS. GRAVES: I've spent most all of my professional
7 career within the rehabilitation field. And for the last seven
8 years, I've been executive vice-president for the Crippled
9 Children's Society of Southern California.

10 Professionally, I have my master's degree in social
11 work, but I want to come back -- within the rehabilitation field
12 professionally, we manage and run four sheltered workshops in the
13 Southern California area with over 250 handicapped people.

14 A long time ago, I want to come back to what I first
15 said, I'm also serving on the Mayor's Committee for the
16 Handicapped in Los Angeles, and a long time ago I was on the
17 Governor's Committee for the Advisory Commission for the
18 Department of Rehabilitation.

19 That's quickly.

20 CHAIRMAN ROBERTI: Very good.

21 Any questions of Ms. Graves? Is there any opposition in
22 the audience?

23 SENATOR CRAVEN: Mr. Chairman, I would move the
24 confirmation of Ms. Graves to the Floor.

25 CHAIRMAN ROBERTI: Senator Craven moves Ms. Graves'
26 confirmation be recommended to the Floor.

27 Secretary will call the roll.

1 SECRETARY WEBB: Senator Doolittle. Senator Mello.

2 SENATOR MELLO: Aye.

3 SECRETARY WEBB: Senator Petris. Senator Craven.

4 SENATOR CRAVEN: Aye.

5 SECRETARY WEBB: Senator Roberti.

6 CHAIRMAN ROBERTI: Aye.

7 The vote is three to nothing; confirmation is
8 recommended to the Floor.

9 MS. GRAVES: Thank you very much.

10 CHAIRMAN ROBERTI: Thank you.

11 The next appointment is Mr. Warren D. Noteware, Member
12 of the State Energy Resources Conservation and Development
13 Commission.

14 We've seen you here before, haven't we?

15 MR. NOTEWARE: Yes, you have, Senator.

16 CHAIRMAN ROBERTI: Tell us why you feel you're qualified
17 to assume this position.

18 MR. NOTEWARE: I think in a general way, probably the
19 best qualification has been my experience on the State Water
20 Resources Control Board. In that two and a half years, I feel
21 that I have learned a great deal about making decisions, some of
22 which disappoint people, and in communicating with people to
23 minimize the hurts over the disappointments.

24 I feel that we have, in the Energy Commission, the same
25 type of enthusiastic, motivated, diligent staff people to work
26 with and to encourage. And I think that my working with the
27 people on the Water Board has been a real asset there also.

1 Prior to being on the Water Board, I was always in
2 private practice and had to deal with standards, many of which
3 were generated by the Energy Commission or in similar ways. And
4 I've learned to appreciate good standards and learn how hard it
5 is to work with complicated and complex regulations sometimes.

6 So, I don't mean by that that I'm bringing any kind of a
7 foregone conclusion that we have to reform our ways of doing
8 things, but I think I have a real sensitivity to procedures that
9 will develop workable standards.

10 CHAIRMAN ROBERTI: Thank you, Mr. Noteware.

11 Are there any questions of Mr. Noteware? Senator Mello.

12 SENATOR MELLO: Yes, I saw Fred Noteware in the room
13 here a few minutes ago, but he must have left. I take it he's
14 your son?

15 MR. NOTEWARE: That's correct, Senator, he is.

16 SENATOR MELLO: He's a very fine person, so I'm happy to
17 support you.

18 MR. NOTEWARE: Well, thank you very much.

19 CHAIRMAN ROBERTI: Any opposition?

20 SENATOR CRAVEN: Move.

21 CHAIRMAN ROBERTI: Senator Craven moves. Secretary will
22 call the roll.

23 SECRETARY WEBB: Senator Doolittle. Senator Mello.

24 SENATOR MELLO: Aye.

25 SECRETARY WEBB: Senator Petris.

26 SENATOR PETRIS: Aye.

27 SECRETARY WEBB: Senator Craven.

1 SENATOR CRAVEN: Aye.

2 SECRETARY WEBB: Senator Roberti.

3 CHAIRMAN ROBERTI: Aye.

4 The vote is four to nothing; confirmation is recommended
5 to the Floor.

6 Congratulations.

7 MR. NOTEWARE: Thank you, gentlemen.

8 CHAIRMAN ROBERTI: Next is Mr. Stanley Cubanski, Chief
9 Deputy Director of the Department of Health Services.

10 Mr. Cubanski, we'll ask you the same question we asked
11 the other Governor's Appointees; that is, why you feel you're
12 qualified to assume this position?

13 MR. CUBANSKI: Thank you, Senator.

14 For the record, I am Stan Cubanski. I have served as
15 the Chief Deputy Director for the last ten months, Chief Deputy
16 Director of the Department of Health Services.

17 In terms of why I'm qualified, Senator, initially upon
18 graduation from college approximately 20 years ago, I started
19 with the State of Connecticut Department of Health. There with
20 the State of Connecticut, I taught developmentally disabled
21 individuals in their state hospital system. After four years of
22 teaching and a move from the east to the west coast, I came to be
23 employed by the State of California. I've been with the State of
24 California for approximately 15 years now, the last 10 years of
25 which I have worked exclusively with Health and Welfare Agency
26 departments, primarily with the Department of Health Services,
27 last year within the Department of Health Services.

1 My initial experiences with the Health and Welfare
2 Agency were at the Department of Finance. Initial assignments
3 were regarding the Medi-Cal program, later assignments were
4 responsibility for the entire Department, including every program
5 within the Department. In 1983, two and a half years ago, I
6 shifted to the Health and Welfare Agency, had responsibility for
7 all departments in terms of budget within the Health and Welfare
8 Agency. Subsequent assignment included all policy issues for the
9 entire Health and Welfare Agency.

10 In terms of my own training, I do have a master's degree
11 in educational administration. There is some transference from
12 the educational field to other fields. In addition to that, my
13 last year has been as Chief Deputy Director of the Department.

14 I don't admit to knowing everything there is to know
15 about the health field, but I'm a relatively quick study, a
16 willingness to listen and learn from my staff. I think that
17 makes me qualified for the job, Senator.

18 CHAIRMAN ROBERTI: Thank you, Mr. Cubanski.

19 Any questions? Senator Mello.

20 SENATOR MELLO: I have a couple of questions.

21 Your last statement said that you would learn to listen
22 from your staff.

23 Don't you think your position should be one of
24 leadership, and you should be providing leadership within the
25 Department?

26 MR. CUBANSKI: Yes, I don't disagree with that, but at
27 the same time, the day-to-day management of the Department, the
28

1 Director, the current Director, the prior Director since I've
2 been there, have focused to a great extent on many, many external
3 issues, and there are hundreds of decisions that need to be
4 nearly on a daily basis on a variety of issues. And the issues
5 are extremely complex, sensitive, and quite frankly, it's
6 necessary to rely upon staff of the Department in terms of making
7 those decisions.

8 So, there is leadership, but at the same time, there's
9 followship, I guess.

10 SENATOR MELLO: I understand recently you were asked for
11 a list of the toxic sites in the State of California, and your
12 Department has not issued a list; is that correct?

13 MR. CUBANSKI: Mr. Chairman, I don't think that is
14 correct. The Department on its own put out a list, had been
15 putting out lists on a monthly basis of toxic waste sites, and in
16 addition to that, emergency spill sites that had been cleaned up.

17 Once the list was scrutinized, it was found that there
18 were a variety of errors in that list; certain sites were double
19 counted; other sites that were on that list, the role of the
20 Department of Health Services was such that the site never should
21 have been put on there because we did very little.

22 We issued an amended list, which was somewhat reduced
23 from the original list, but the amended list we have put out, and
24 from our perspective, we have issued the list and, as I've
25 indicated, we are moving on with the other responsibilities of
26 the Department.

27

28

1 SENATOR MELLO: On June 21st of this year, 1985, the
2 information I have is that you stated that you had no plans to
3 issue a list of toxic sites cleaned up under the Deukmejian
4 administration.

5 MR. CUBANSKI: Mr. Chairman, I've been quoted in the
6 newspapers a number of times. The list which we originally
7 issued was in error. We issued a subsequent list which we had
8 audited for a couple of weeks by our Audits and Investigations
9 Division. The list was audited outside of the toxics area where
10 the list had been prepared.

11 We, in fact, did submit that list to the Governor's
12 Office, to the Legislature, to the press, and we feel we complied
13 with the legislative requests in that regard. And we have no
14 plans to go back over and plow that ground up in terms of why
15 there were errors on the original list, et cetera, et cetera.

16 We will update that list in terms of our
17 accomplishments. We will comply with other legislative reports
18 in this regard, but I feel on that issue, we have complied,
19 Senators.

20 SENATOR MELLO: Is it true or false, then, that you did,
21 on that day, June 21st, make a statement that you had no plans to
22 issue a list of toxic sites cleaned up by the Deukmejian
23 administration?

24 MR. CUBANSKI: That is false. We in fact did issue the
25 list.

26 SENATOR MELLO: Well, that was part of the press
27 statement that I believe we have available.
28

1 What I was trying to do is to find out what your
2 philosophy would be as for not issuing a list. And if you say
3 you have issued a list, I'd certainly like to have a copy of it.

4 MR. CUBANSKI: Senator, I don't have a copy of that list
5 now, but I will make a copy of that list available to you before
6 the week is out.

7 SENATOR MELLO: All right, that's a list that has been
8 cleaned up recently?

9 MR. CUBANSKI: That is correct, and the list is further
10 subdivided by site characteristic: whether it's a large dump
11 site; whether it's a spilled pail. The list is also categorized
12 by the role of the Department of Health Services as to whether we
13 in fact went in with shovels, or whether we were simply an
14 advisory role to someone else who was cleaning up the site.

15 SENATOR MELLO: On another issue, what is the position
16 of the Department as it relates to ocean incineration of toxic
17 wastes? That's in response to the plan of the Environmental
18 Protection Agency. They have requested statements, and the date
19 for closing was, I believe, a week ago Friday.

20 MR. CUBANSKI: We have and are continuing -- I recognize
21 that the EPA has held hearings on that issue. We have not
22 testified on that issue before EPA. We have had some discussions
23 within the administration on that specific issue. Those
24 discussions are continuing, Senator.

25 SENATOR MELLO: By not submitting testimony or
26 submitting a position paper, is it because you feel that this is
27 not an issue that would affect the public health of the people of
28 California?

1 MR. CUBANSKI: No, Senator. We believe it is an issue
2 that is of concern, may have an impact on public health;
3 although, the information that I have read on it, and I don't
4 claim to be a scientist in this regard, but the information that
5 I have read on this subject would seem to indicate -- it's
6 preliminary information, obviously -- would seem to indicate that
7 the ocean burning would have less of a public health impact than
8 present land disposal methodologies, or other methodologies for
9 disposal of toxic wastes.

10 SENATOR MELLO: Well, there were many statements given
11 by Members of the Legislature and Members of Congress, and I was
12 somewhat surprised that our own Health Department of the State of
13 California was not there leading the way on an issue that
14 potentially has great adverse effects on the state of California.

15 So, I guess your position is, you're going to wait and
16 see?

17 MR. CUBANSKI: No, we are not, Senator.

18 As I've indicated, we have had some discussions within
19 the administration and those continue.

20 The information -- and again, I'm not in a position to
21 judge the scientific validity of that information -- but the
22 information I have read and has been produced for me indicates
23 that ocean burning would have less of an impact on the health of
24 Californians than do current disposal methodologies.

25 As such, if that were the sole consideration, it has
26 less of a public health impact, then the recommendation from the
27 Department of Health would be that this is preferable to our
28 current disposal methodologies.

1 SENATOR MELLO: On another issue, dealing with the
2 delivery health services, there's a couple of programs: one in
3 Monterey County and one in Santa Barbara, looking at a new method
4 of health delivery services.

5 The one in Santa Barbara has operated very successfully.
6 The one in Monterey County has ended up with a substantial loss
7 to the providers of health care services there.

8 The information I have is you and your Department are
9 reluctant to try to negotiate a way of settling the great amount
10 of claims that have come in against the authority down there.

11 This is the first chance I've had to ask you what your
12 your position is on this, or what is your reluctance, or whether
13 or not you feel the state has an obligation or not in those
14 contracts?

15 MR. CUBANSKI: I have met with Assemblyman Farr
16 approximately three or four times on this issue. I've also met
17 with a group of providers from Monterey County on the issue, and
18 the group we have met with, the providers from Monterey County,
19 represent all of the providers in Monterey County.

20 There were several things. One, we are not reluctant to
21 negotiate with the folks in Monterey County. We are not
22 reluctant to negotiate with them.

23 The issue is currently tied up in bankruptcy court,
24 however. There are approximately \$12 million worth of
25 outstanding claims against the Monterey County Health Initiative,
26 and there are approximately \$6 million worth of assets available
27 to pay \$12 million worth of claims.

1 The Initiative would like the State of California to
2 make up the entire \$6 million difference.

3 The position of the Department on the issue has been
4 that we would review the contract we have had with the Monterey
5 County Health Initiative to determine if in fact we have a legal
6 liability. My legal staff has indicated to me that we entered
7 into a contract in good faith with the Monterey County Health
8 Initiative -- by the way, that Initiative phases out at the end
9 of this month. We have had a contract. It's been an at-risk
10 contract with the Monterey County Health Initiative.

11 From a legal perspective, we do not believe we owe the
12 Monterey County Initiative any money at all. I think from the
13 perspective that we in the Department of Health Services are
14 interested in advancing capitated health systems and advancing
15 contractual health systems, we are willing to talk with the
16 Monterey County providers.

17 We also acknowledge that as a result of entering into
18 the contract with Monterey County, we, the State of California,
19 have saved approximately \$2 million in the 18-month period of
20 time that the Monterey County Health Initiative was operational.
21 I'm sorry, it was a 20-month period of time. We saved
22 approximately \$2 million in Medi-Cal. So, we were saving roughly
23 \$100,000 a month.

24 I think we're willing to talk to the Monterey County
25 providers, and I think we're willing to consider sharing the
26 savings we made while they were operational. They were
27 operational losing money; we, the State of California, had
28

1 contracted with them at 95% of fee-for-service, and we were
2 making roughly \$100,000 a month.

3 We're willing to talk with them. We're not willing to
4 -- we're not unwilling to negotiate. We are negotiating with
5 them.

6 But we are unwilling to make up the entire \$6 million
7 loss, and the reason for that is the loss occurred for a number
8 of reasons. When we shifted from Medi-Cal fee-for-service to a
9 capitated arrangement, the Monterey County Health Initiative
10 basically took off all utilization controls. Utilization
11 controls we have in the Medi-Cal system is namely a medical
12 second opinion system. We employ state doctors who essentially
13 provide a medical second opinion to private providers, and we
14 essentially tell them whether we believe a surgery is necessary
15 or unnecessary, et cetera.

16 We also have staff doctors and nurses who are employed
17 by the State Department of Health but who work in hospitals
18 determining whether the length of stay of a specific patient
19 should be five days or four days for a specific diagnosis.

20 Now, we save extensive amounts of money in the Medi-Cal
21 fee-for-service system by having those utilization control
22 processes in effect. In Monterey County, they took off all
23 utilization controls. And quite frankly, the providers, without
24 that medical second opinion system in place, started increasing
25 utilization and billing the Monterey County Health Initiative for
26 that increased utilization.

1 The second thing that occurred was that the Monterey
2 County Health Initiative increased the reimbursement that they
3 paid to hospitals, physicians, and other providers in that
4 county.

5 So, they basically took the Medi-Cal program. We
6 contracted with them at 95% of the amount of money we would pay,
7 and they eliminated utilization controls; they increased the
8 reimbursement rates. In addition to that, the management
9 information system, which they had planned on having in effect,
10 never went into effect, and as such, individual doctors did not
11 really know how they were doing in terms of the amount of money
12 or the pot of money that available for them to expend. As such,
13 individual physicians without that information continued to
14 prescribe, in some cases, unnecessary services; continued to bill
15 at a higher rate. And to some extent, that contributed to a
16 great deal to the problems that the Monterey County Health
17 Initiative experienced.

18 From that perspective, we're unwilling to make up the \$6
19 million loss, but we are willing to negotiate, and we are willing
20 to arrive at some compromise figure.

21 SENATOR MELLO: The information I have is that you
22 haven't been that willing to discuss in a meaningful way with
23 them. Talking is one thing, but, you know, putting something on
24 the table is something else. And they feel that it was long
25 delays in getting the project started, the deadlines that came
26 up, is why many of the problems that existed in that program.

1 I think if we're ever going to learn from these health
2 delivery systems, Medi-Cal's costing us a lot of money statewide,
3 we have to get out and find ways so we can save money, and yet
4 preserve a delivery system. But if everyone's going to be
5 at-risk, all these counties, then why take a chance if the state
6 is going to shove it to you in the end?

7 The people down there, they're out \$6 million, no place
8 to turn for it.

9 That's all the questions I have.

10 CHAIRMAN ROBERTI: Thank you, Senator.

11 Any further questions of Mr. Cubanski? Senator Petris.

12 SENATOR PETRIS: Mindful of last week's session, mine is
13 going to be somewhat shorter this time, Mr. Chairman.

14 The problem is that it's such a vast agency, that covers
15 so many areas of responsibility, that I think to do this
16 thoroughly we'd need a lot more time.

17 I'd like to get a better picture of Mr. Cubanski's over
18 all philosophy. Let's say you get confirmed, and you're the
19 Director.

20 Can you tell us what is your concept or your vision of
21 the ideal role of the Department of the Public Health Services?

22 MR. CUBANSKI: Well, Senator, without wanting to be
23 disrespectful, the position that I have been functioning in is
24 the number two position in the Department, the Chief Deputy
25 Director. Dr. Kizer is currently the Director of the Department
26 and will be coming before this committee at a later date also for
27 confirmation. So, I'm in the number two position. I'm not in
28 the head honcho's seat.

1 Nonetheless, I still have some impact on the Department,
2 and I will respond to your question.

3 SENATOR PETRIS: Yes, I realize what the lineup is, but
4 I think it's an extremely important position. As a lot of us
5 know, sometimes the boss is busy doing P.R. and other things, and
6 the number two person really gets the bulk of the assignments
7 thrown at him sometimes.

8 MR. CUBANSKI: The mission of the Department of Health
9 Services, I was somewhat amused by Assemblyman Floyd saying that
10 it really doesn't matter who the Director or Chief Deputy
11 Director is, because the mid-level management continue to run the
12 Department. I think while I was amused at that, there is
13 certainly some truth to that.

14 The mission of the Department stays in place regardless
15 of who the Director or who the Chief Deputy Director is. Our
16 primary role is to protect the health of Californians, to promote
17 an environment that contributes to the enhancement of health.
18 That's the goal of the Department, has been the goal, regardless
19 of who the Director or the Chief Deputy has been.

20 I have attempted in my day-to-day dealings in the
21 Department to further that mission of the Department, and I will
22 continue to do that if I am confirmed, Senator.

23 SENATOR PETRIS: One of them is the day-to-day
24 commitment to doing the job. The other is contribution to
25 forming a policy.

26 I think you're high enough where people would ask you,
27 the Director would ask you, the Governor may ask you: What do
28

1 you think we should do for next year; what policy changes, if
2 any, should we make; how much money should we recommend or
3 accept?

4 There's all kinds of bills floating around, so I'd also
5 like to get some input from you as to what your position would be
6 on things of that sort.

7 We have quite a dispute going now on the cancer
8 registry, for example. You know, we have a report that says over
9 a period of five years, we ought to have all the counties
10 included. We had some legislation that didn't cover all the
11 counties but covered some; that was cut back.

12 Now, what is your position on that, on the cancer
13 registry? Do you think that's a good enough step for our state
14 policy to be taking?

15 MR. CUBANSKI: Well, I think it's important to keep in
16 mind when taking about registries, which are basically data
17 banks, if you will, in talking about registries, whether it be a
18 cancer registry, whether it be a birth defects registry --

19 SENATOR PETRIS: That was my next question, so you might
20 as well cover them both.

21 MR. CUBANSKI: Whether it be any kind of registry, is
22 that a registry itself is a tool. We can continue to put
23 information into a registry, but it's using the registry in
24 analytical fashion to figure out what the data may be telling us
25 that's the important thing.

26 SENATOR PETRIS: It's an early warning system.

27 MR. CUBANSKI: I would agree with that.

28

1 Now, in terms of both those registries, we are
2 supportive of expansion of the cancer registry at this point.
3 The budget that the Governor proposed did include expansion of
4 that registry from the counties that it is in now to an 11-county
5 expansion. Assemblyman Connelly has a bill in that would require
6 an expansion over a quicker period of time.

7 We have not closed the door to statewide expansion of
8 this registry; although, we are taking, as we take all of our
9 innovative programs, we are taking it gradually. We're not
10 trying to capitate the Medi-Cal system overnight, and we're not
11 trying to expand cancer registries overnight. We are going to
12 phase it in.

13 In terms of birth defects registries, there was a veto
14 of some amount of money that was provided for by the Legislature
15 in the '85-6 budget with the veto message by the Governor
16 basically saying that the administration would review a report
17 that my departmental staff are currently doing, and after the
18 receipt of that information, would make the decision on the
19 expansion of the birth defects registry.

20 SENATOR PETRIS: What about the cancer registry? That
21 was cut, too; wasn't it?

22 MR. CUBANSKI: It was cut back, however, the amount of
23 money that is in the budget was a tripling over the base amount
24 that was in there. So, in fact the Governor did veto it back,
25 but nonetheless, the amount of money is tripling, and the number
26 of counties that we are going to expand that registry into,
27 starting now, is 11 additional counties. We're taking the
28

1 percentage of the state population that's covered by cancer
2 registries from roughly 50% of the state's population up to about
3 80% of the state's population will be covered in that registry.

4 So, yes, it was scaled back, but nonetheless, the amount
5 that's in the Governor's budget is three times as much as last
6 year; it's 11 additional counties; it's 80% of the state.

7 Now, after we've done that 80% of the state, we may be
8 back before this Legislature asking for additional money to go
9 statewide. We have not ruled that out yet. As a matter of fact,
10 our inclination is to cover the entire state in this gradual
11 phase-in process.

12 SENATOR PETRIS: That's still your goal, and do it
13 within the five years recommended by the same report?

14 MR. CUBANSKI: That's correct, but at the same time,
15 roughly a year from now, we're going to stop and take a look at
16 what we've done. Should we go for it statewide now; is the data
17 system not only gathering information, which is what it's
18 designed to do, but is the information that we're collecting of
19 value to us? And that, we think, is a necessary question to ask.

20 SENATOR PETRIS: Is Orange County included in that
21 eleven?

22 MR. CUBANSKI: Yes, it is.

23 SENATOR PETRIS: Was Senator Seymour's bill passed?

24 MR. CUBANSKI: No, that was -- Senator Seymour's bill,
25 in terms of Orange County, relates to the next registry, the
26 birth defects registry. There are currently two bills in the
27 birth defects area: Assemblyman Vasconcellos has a bill which
28

1 would require a statewide expansion of the birth defects registry
2 now; Senator Seymour's bill is somewhat more limited in that it
3 only covers Orange County as opposed to the entire state.

4 SENATOR PETRIS: Well, that's better than nothing, I
5 guess.

6 Do you support both of them or either or them?

7 MR. CUBANSKI: At the present time, the position of the
8 administration has been expressed in a plan that the Health and
9 Welfare Agency put out approximately a year ago. The plan was
10 developed by the State Department of Developmental Services, and
11 the Director there, Gary Macomber. Mr. Macomber, in development
12 of that plan, worked with some people, the staff in the
13 Department of Health Services, primarily Dr. Gregory on our
14 staff. And that report, which has been adopted by the Health and
15 Welfare Agency and endorsed by the Governor's office, basically
16 calls for a 10-county expansion of the birth defects registry at
17 this time.

18 Now, the information that Health Services will be
19 providing to the Department of Finance and to the Governor's
20 office in approximately six weeks is going to discuss how we
21 should expand that registry.

22 I don't think it's any secret that this Governor is on
23 record as wanting to reduce the size of the state bureaucracy.
24 We in the Department of Health Services currently have eight
25 employees, highly trained, highly educated and very bright and
26 aggressive employees, working in a five-county area in the birth
27 defects registry program. Those employees, as part of their
28

1 responsibilities now, go through 60 hospitals, roughly 60
2 hospitals, in the five-county Bay Area. They go from hospital to
3 hospital, sitting down in those hospitals, reviewing birth and
4 birthing information to determine if associated with any specific
5 birth there, in fact, are birth defects related to it. And they
6 look back on a child from the point they're born until the first
7 year of their life, as some birth defects are not evident or
8 obvious at birth. There may be certain congenital heart defects
9 that only occur six months, nine months after the child is born.

10 So, they're looking back at births in 60 hospitals over
11 a 12-month period of time.

12 I'm not convinced that using state employees for that
13 function is the best way to go. We are looking and discussing
14 two or three different options.

15 I am not going to recommend, in light of the fact that I
16 not only want to advance my health goals, or the health goals of
17 the Department of Health Services, but I also have to keep in
18 mind the Governor's goals, since I in fact am a Governor's
19 Appointee.

20 SENATOR PETRIS: Which are to cut down the number of
21 employees.

22 MR. CUBANSKI: Well --

23 SENATOR PETRIS: I mean, how can you justify that when
24 the previous reports and everybody in the field agrees that we've
25 got to have a cancer registry as soon as we can and a birth
26 defects thing, and on the other hand, we're saying: Well, we
27 can't afford it.

28

1 MR. CUBANSKI: Well, I don't think it's a question,
2 Senator --

3 SENATOR PETRIS: You're talking about eight employees to
4 cover 60 hospitals --

5 MR. CUBANSKI: That is correct.

6 SENATOR PETRIS: -- in five counties. Is that enough?
7 Regardless of the issue whether the state employees should be
8 doing it or other people, do you think that's enough people on a
9 matter as urgent as that, when cancer is still rampant, and we're
10 trying to develop early warning systems, and prevention, and
11 emphasize that? How can you justify that?

12 MR. CUBANSKI: Senator, by virtue of the fact that we're
13 supporting expansion in one of the two areas. We're on record
14 already. We have been budgeted to expand already. I would have
15 to say no, it's not enough because if we felt it had been enough,
16 those expansions would not have been proposed by the Governor in
17 his budget.

18 So, no, what we're doing now is not enough, and we are
19 proposing expansions. But at the same time, I don't think that
20 the process of sending state employees into 600 different
21 hospitals in the state, and it would take, since there are 10
22 times the number of hospitals, it would take possibly 70 or 80
23 state employees, I don't know if that's the best use of
24 Department of Health resources.

25 I'm not saying we're doing enough, but we would like to
26 take a look at the option of contracting with counties for this
27 function, or even better, maybe contracting with the hospitals
28

1 themselves to aggregate that data at a hospital level and simply
2 forward that data to us and opposed to us hiring state employees
3 to go out in those hospitals to gather the data.

4 SENATOR PETRIS: Why? Is it more efficient? Do the
5 contracting people know more about it? Are they better educated?
6 What's the advantage?

7 Other than the impression given the public that we're
8 cutting the overhead, or cutting the bureaucracy down?

9 MR. CUBANSKI: I don't think it's an attempt to give the
10 public that impression.

11 In terms of the cancer registry and in terms of the
12 birth defects registry, we currently do both of them in different
13 ways.

14 In the cancer registry, in fact, the data is aggregated
15 at a hospital level, and the hospitals ship that data forward to
16 a very small cadre or core of state employees in the Department
17 of Health Services, who then aggregate that data, enter it into
18 computer systems, and then analyze that data.

19 In the birth defects registry, the way that registry was
20 started, it in fact used state employees to go from hospital to
21 hospital to gather the data.

22 We currently have both systems in operation now. They
23 are different. One uses state employees; one relies very heavily
24 on the use of hospital employees. We are looking at both options
25 and other options in terms of what is the best way to expand the
26 birth defects registry.

27

28

1 The best way that we've found in terms of the cancer
2 registry is, in fact, to have the data aggregated at the hospital
3 level and forwarded to Health Services. We tried a different
4 system in birth defects. I don't know if it's necessarily the
5 right way to go.

6 SENATOR PETRIS: What happens when it gets to Health
7 Services? Do you have enough people to do an adequate review and
8 keep you afloat and current, or do you need more people to do
9 that?

10 MR. CUBANSKI: Again, the budget did propose some small
11 increases in these areas.

12 SENATOR PETRIS: Is it enough?

13 MR. CUBANSKI: It is at this time, Senator, yes.

14 SENATOR PETRIS: What is the prospect for the future?
15 Is it going to continue at this same pace, or is it going to be
16 enlarged?

17 MR. CUBANSKI: I think the prospect for the future, and
18 I have already said that we're taking the expansion in phases.
19 If I were a seer, I would say that we are going to look at this
20 about a year from now, and the data will continue to be running,
21 and we'll be back before you asking for expansion.

22 SENATOR PETRIS: What if you have to hire more people?

23 MR. CUBANSKI: I will look at it as I do in all cases.
24 I will look to see what we're currently doing with the 4,000
25 employees in the Department to see if there are any areas where
26 we can certain improvements, and if there aren't, we will be back
27 asking for whatever little amount we may need.
28

1 SENATOR PETRIS: Is the toxic cleanup problem one of
2 money also? Are there constraints there?

3 MR. CUBANSKI: In the current budgets, the '85-86
4 budget, the one that's been in effect for 10 days now, we have
5 come before you and my staff, in conjunction with your staff,
6 have expanded the toxics program by approximately 110 employees.
7 Again, another significant expansion in terms of the number of
8 employees.

9 I think right now a pressing need for both the
10 Legislature and the administration is to take a look at the \$100
11 million that the citizens of California have made available to
12 us, and to develop an expenditure plan for that \$100 million that
13 we can both live with, and to get on with expending that \$100
14 million in cleaning up additional sites.

15 So, I think we have sufficient staff and more than
16 sufficient staff in the toxics area. I think now we've got to
17 move on to clean up.

18 SENATOR PETRIS: Total cost has been estimated, and I've
19 heard figures over 200 billion just for California.

20 What is your Department's estimate?

21 MR. CUBANSKI: We don't have an estimate at this time,
22 Senator, in terms of cleanup of the entire state.

23 I think we attempted -- I don't know if you have been
24 following it -- but we attempted to move a certain toxics site in
25 Southern California to Bakersfield. The folks in the Bakersfield
26 area didn't like that too much and took us to court. And the
27 judge ruled that the Department would have to perform an
28

1 Environmental Impact Report prior to creating a hole in Southern
2 California in a hill in Bakersfield.

3 We have taken a look at the court's decision, are still
4 considering whether to appeal and have some discussions going.
5 We're taking a look at whether in fact -- and the Environmental
6 Impact Report process is a substantially long process. We have
7 estimated realistically, we think, that the EIR, in terms of this
8 particular site, would take approximately five years. That's
9 assuming that when we get into court three to four different
10 times on that EIR, that we would be successful and that the EIR
11 would in fact continue.

12 I think from the perspective of California, that if an
13 EIR is required to clean up every site in California, it's going
14 to be a 100-year process. There sufficiently aren't sufficient
15 resources within the state to do this.

16 I think we, as a result of this process, may see less,
17 may see less movement of the toxic waste sites from Site A to
18 Site B, and we in fact may be looking in terms of future cleanup,
19 we may be looking at and may be moving toward more on-site
20 cleanup.

21 I'm not saying that's the policy of the state, but I'm
22 saying that the process which we have designed to protect
23 ourselves and to in fact enhance the environment is now a process
24 which is going to take us through a number of years before we can
25 even turn a shovel full of the toxics waste over.

26 I think we may be looking at more on-site kinds of
27 cleanup and remediation.
28

1 SENATOR PETRIS: What about enforcement of current
2 things, current statutes? Have you beefed up the enforcement
3 staff?

4 MR. CUBANSKI: Yes, we have. The 120 or 110 staff that
5 we have new in the current year is both --

6 SENATOR PETRIS: Well, I thought that was for cleaning
7 up existing sites?

8 MR. CUBANSKI: It is for cleanup, but looking back over
9 the budgets over the last three or four years, we've added to the
10 enforcement staff year in, year out, and in fact are doing more
11 frequent looks at storage sites and temporary storage sites, at
12 disposal sites. The enforcement and the fining is on the
13 increase in this area.

14 And this, I guess, has been debated and will be
15 continued to be debated, the issue of the new Department of Waste
16 Management, our new toxics department by whatever name.

17 There are a number of proposals going. We, from our
18 perspective, felt that the proposal that had been advanced by the
19 Governor, his reorganization plan, was the best one. The other
20 House of the Legislature did not think so at the present time
21 because of a number of glitches in the proposal.

22 We're working now at resubmitting a reorganization plan,
23 taking into account the input we received throughout the process,
24 including the input we received from the Assembly. And we'll be
25 coming before you with another reorganization plan.

26 We think there's a need for reorganization in this area
27 because of the overlapping jurisdiction and duplication of
28 efforts on the part of a number of state agencies.

1 We will be advancing our plan. At the same time, we're
2 willing to sit down and talk with either House of the Legislature
3 in terms of their ideas of improvements that can be made in the
4 process.

5 SENATOR PETRIS: Are you acquainted with the dispute in
6 Alameda County in the resignation of Mr. Jensen as Enforcement
7 Coordinator?

8 MR. CUBANSKI: Somewhat.

9 SENATOR PETRIS: Do you know about his letter of
10 resignation to Mr. Moskowitz, Deputy Director of Toxic Substance
11 Control, dated May 20?

12 MR. CUBANSKI: I knew that Mr. Jensen had submitted a
13 letter of resignation to Mr. Moskowitz, but at the same time, for
14 the record, I would like to state that Mr. Moskowitz had come to
15 me while he was still there in the Department of Health Services,
16 indicated that he was recommending, as Mr. Moskowitz (sic) was
17 basically on loan to the state from Alameda County, and we were
18 reimbursing the county for his services. Mr. Moskowitz, prior to
19 his resignation, had recommended to me that we not continue
20 beyond July 1 of this year the contract with Alameda County for
21 Jensen's services.

22 The issues that led Mr. Moskowitz to make that
23 recommendation had to do with, I think, less with policy disputes
24 and more with administrative, what I want to call administrative
25 hassles.

26 SENATOR PETRIS: Let me read to you a couple of extracts
27 so you can comment on them.

1 In his resignation as the Enforcement Coordinator he
2 says:

3 "I can no longer be a party to the
4 continued sham of a strong enforcement
5 policy, which you have so visibly par-
6 ticipated in selling to the public in
7 which I find myself and my dedicated
8 staff having carried for over a year
9 without adequate support or resources."

10 That's one of his complaints. It's not an administrative thing;
11 it's a matter of the proper resources.

12 He says that he's constantly:

13 "... had to fight to insure that
14 at least an independent referral
15 process using state prosecutors
16 and the Attorney General, free
17 of bureaucratic and political
18 influence, was maintained."

19 So, that's another complaint. Then he says that:

20 "Strong and vigorous enforcement
21 litigation is absolutely necessary,
22 and in fact has been personally
23 promised by you ..."

24 I don't mean you. It's addressed, as you know, to Mr. Moskowitz,

25 "... to the public on behalf of the
26 Governor time and time again. This
27 litigation is not available from
28

1 within the Department, yet Mr. Beach,
2 with the approval of your adminis-
3 tration apparently pursuant to the
4 instructions of Deputy Secretary of
5 Legal Affairs ..."

6 et cetera,

7 "... has unilaterally revoked my
8 ability to freely interrelate with
9 the Attorney General to secure the
10 best possible legal representation."

11 The reason I emphasize that part, and I asked you about
12 enforcement teeth, is that the administration in the first two
13 years, first year especially, pulled the fangs of one enforcement
14 unit after another in the entire consumer protection area.

15 Now, we can quarrel about that and the methodology
16 that's extant now, that there's too much government regulation
17 and stifling business. The Harvard Business Review doesn't agree
18 with that analysis, but apart from that, when it gets to health
19 and matters as vital as what you've been describing to us in the
20 toxic field and other fields related to health, it's beyond the
21 luxury of whether you buy a t.v. set that works, or two t.v.
22 sets, or V.C.R., or an automobile. You know, we're talking about
23 basic health that affects not only people in the work place, but
24 contaminated wells, water supply, et cetera, et cetera, all of
25 which is under your jurisdiction.

26 This complaint says you haven't given us the resources;
27 you haven't let us litigate; you haven't let us exchange freely
28

1 with the components of our state resources which have the lawyers
2 to do it.

3 It seems like a very serious issue. I'm sure you have
4 an answer to it, and I'm interested, if you're up on it. This
5 may not have come to your attention. I'd be interested in your
6 comments if you are familiar with it.

7 MR. CUBANSKI: It has come to my attention. It came to
8 my attention every day. Mr. Moskowitz was a very bright and
9 aggressive, hard working attorney, Deputy Director within our
10 toxics program. Mr. Moskowitz was a Governor's Appointee, as I
11 have been for ten months, and Mr. Moskowitz on occasion was an
12 independent spirit, if you will.

13 SENATOR PETRIS: What does that mean?

14 MR. CUBANSKI: I'm going to tell you in a moment.

15 I did not let and do not let my Deputy Director in the
16 licensing program, just to use an example, forward paper, if you
17 will, to the Attorney General's office asking for revocation of a
18 license of a nursing home unless my legal office has reviewed
19 that paper and concurs that the evidence is there that a nursing
20 home's license should be revoked. It's a very serious matter,
21 both from the perspective of the patients who would have to be
22 moved from that nursing home, and for the owner, who we would be
23 putting out of business. I consider that a serious matter. I
24 want my legal office involved in reviewing what my licensing
25 division forwards to the Attorney General's office.

26 Mr. Jensen and Mr. Moskowitz, on occasion, forwarded
27 requests to the Attorney General's office asking for certain
28

1 actions, whether they be enforcement actions or other actions,
2 that were not reviewed by my legal office.

3 When that came to my attention -- and let me tell you
4 the down side of that. We have a \$200,000 a year contract with
5 the Attorney General's office to do certain work in the toxics
6 enforcement area. By mid-June of 1985, the Attorney General's
7 office had billed us \$600,000 against an interagency agreement of
8 \$200,000. As the Chief Deputy Director of the Department, I was
9 confronted with an overexpenditure, something that was supposedly
10 under my control, something that I am legally liable for, and
11 knew nothing about.

12 I immediately said to my legal office: Cases that go to
13 the Attorney General from this Department will be reviewed by my
14 legal office. My Toxics Division is no longer an independent
15 agent, free to refer to the Attorney General without consultation
16 of the legal office.

17 So, to that extent, I am responsible for stopping an
18 independent referral process of referring cases directly from the
19 Toxics Division to the Attorney General's office and having that
20 process bypass the legal office. I have stopped that process.

21 I felt it was appropriate that it be stopped. I don't
22 think political judgments are going to enter into this. I think
23 the reason why the Department of Health Services employs
24 approximately 40 attorneys is to make these legal judgments.

25 Yet here we had a division that was operating
26 independently, if you will, and I just could not see how I could
27 be held responsible for running that department unless it was
28

1 going to operate within the parameters of good management and
2 good administration.

3 SENATOR PETRIS: Since that order went out, what
4 percentage of referrals have been approved, and among those
5 turned down, how many were strictly because of budgetary limits?

6 MR. CUBANSKI: None have been turned down because of
7 budgetary limits. No cases that should have gone to the Attorney
8 General's office have not gone there. I think the quality of the
9 cases, by virtue of the fact that we now have legal staff
10 reviewing the cases beforehand, and legal staff who work outside
11 of the Toxics Division, by the fact that we have to some extent
12 an independent party, my legal office, reviewing proposed
13 actions, I think the quality of those cases that we refer to the
14 Attorney General has gone up.

15 SENATOR PETRIS: Can you tell me what percentage have
16 been stopped for whatever reason?

17 MR. CUBANSKI: No, I do not have the information at my
18 fingertips. Again, I can take a look since June 15; I can take a
19 look since June 1st; I can take a look since July 1, when Mr.
20 Jensen returned to county service. I can look from any period of
21 time at the number of cases that have been referred into the
22 legal office versus the number that have been forwarded to the
23 A.G., or the number that have been kicked back to the program for
24 further information.

25 I don't think the objective is to stifle any
26 enforcement. The objective is to do the preliminary work and
27 make sure we've got a solid case before we go charging off to the
28 Attorney General's office.

1 Quite frankly, because the Attorney General, while their
2 services are excellent, their administrative costs are also high.
3 And I'd rather have my legal office do the preliminary work than
4 forward such cases that need a great deal of work by the Attorney
5 General's office.

6 SENATOR PETRIS: What's the scope of authority of your
7 legal office? Do they do any enforcement directly, any
8 litigation, or is all of it done by the A.G.?

9 MR. CUBANSKI: The A.G. does most of the litigation for
10 the Department of Health Services in all of our programs. On
11 occasion, the Attorney General feels there may be a conflict with
12 them representing the Department, in which case they give the
13 Department of Health Services the authority to contract with an
14 outside attorney, a non-state service attorney, to represent the
15 state because they may have a conflict.

16 SENATOR PETRIS: You don't have any litigation going
17 from within the Department then?

18 MR. CUBANSKI: No, we do not use our attorneys in a
19 litigation setting in court, and that's a generalization, mainly
20 the Attorney General.

21 SENATOR PETRIS: Are they experienced trial attorneys?
22 Have they had experience before?

23 MR. CUBANSKI: The Attorney General's staff --

24 SENATOR PETRIS: No, your own staff.

25 MR. CUBANSKI: Some have --

26 SENATOR PETRIS: To determine how they weigh the
27 evidence, if they haven't had any trial work, it would be a
28 little more difficult compared to one who knows what to look for.

1 MR. CUBANSKI: Some of my attorneys have that
2 experience, some do not. Some come with their degrees. They're
3 fresh out of college, come to work for the State of California in
4 a variety of settings in the state, and have no private practice
5 trial experience.

6 I don't know what percentage have trial experience
7 versus what don't, Senator. Again, I can get that information if
8 you would like it.

9 SENATOR PETRIS: No, that's all right. You have enough
10 to dig up for us. We don't need that one.

11 Well, I'll stop at this time, Mr. Chairman. Thank you.

12 CHAIRMAN ROBERTI: Thank you, Senator.

13 Senator Mello.

14 SENATOR MELLO: Mr. Chairman, if I could make a
15 follow-up question to a question I asked you previously about the
16 submitting of the list of the sites that have been cleaned up.

17 Now, my understanding was that you were before the
18 subcommittee of the Senate, and Senator Greene and Senator
19 Alquist both asked you about the submission of this list. And
20 the indication was at that point that you would make it available
21 to the Legislature.

22 My understanding is that the list has never been sent to
23 the Legislature. I just wanted to go back and re-ask that same
24 question again.

25 MR. CUBANSKI: Senator, I have not appeared before the
26 Senate prior to today and ever discussed this list. Mr.
27 Moskowitz, the former Deputy Director for the Toxics Substances
28

1 Control Division, did most of the testifying on toxics issues,
2 whether it be specific pieces of legislation, or the toxics
3 budget.

4 SENATOR MELLO: I misstated the question.

5 Because of the testimony before the subcommittee,
6 Senator Greene and Senator Alquist sent a letter directed to you,
7 the Health Agency, requesting this information.

8 MR. CUBANSKI: Senator, the information has been
9 provided. It has been released statewide.

10 If because of some glitch in our system a specific
11 Senator or the entire Senate did not get the list, it will be
12 provided. The list is public information. We certainly don't
13 want to withhold it from you.

14 SENATOR MELLO: The only question I'm seeing is, if it
15 has gone statewide, why didn't the Senate get a copy of this
16 list?

17 MR. CUBANSKI: That would be nothing but a terrible
18 mistake. I mean, we in our dealings -- and I think we've
19 evidenced this in the past year, the present Director, Ken Kizer,
20 Dr. Kizer, has instituted a policy such that if our environmental
21 health people are going to close a well in a specific district,
22 it's the policy of the Department to give advance notification to
23 the affected Legislators saying: Hey, we've got a problem with
24 the water system in your district, and this is what's going to
25 happen, and we will keep you informed.

26 If we're going to take action against a specific nursing
27 home in your area, again we're trying to give you advance notice
28

1 of those kinds of things that are happening because we know that
2 generates interest on the part of your constituents.

3 So, we're trying to give you advanced warning and
4 advanced notice on darn near everything we do that's going to
5 have some impact on you.

6 If in fact we have not provided this list, again, it's a
7 terrible oversight, Senator, and it will be provided.

8 SENATOR MELLO: You touched on nursing homes. I'd just
9 as soon not have advanced notice. That's been the problem in the
10 past. They've been tipped off by your Department of when the
11 inspection was coming, and they went out and borrowed linen,
12 borrowed staff, cleaned up the place, and they passed the
13 inspection.

14 MR. CUBANSKI: We're not providing advance notice to the
15 nursing homes. We're trying to provide advance notice to
16 Legislators that we will be taking action against a nursing home
17 because of an inspection or enforcement action that licensing
18 staff in the Department have taken.

19 SENATOR MELLO: Well, for me, you can just go in there
20 unannounced without notifying me. Just go in there and inspect
21 them in the way that the law allows you to. And if they're not
22 meeting the law, then you have the right to cite them, which I
23 think here lately, because of the bill the Legislature forced on
24 the Governor for him to sign, and he finally signed 11 bills, or
25 one bill that would constitute 11, have gone out now. And
26 they're closing down some; they're fining others.

27

28

1 This should have been done 15-20 years ago. I'm not
2 blaming you for this, or even Governor Deukmejian, but I'm just
3 blaming society has been asleep while the nursing homes have been
4 violating the law and doing things that should never have
5 happened.

6 CHAIRMAN ROBERTI: Any opposition to Mr. Cubanski?

7 MR. LYALL: Mr. Chairman, Members, I'm Jack Lyall,
8 representing the California State Employees' Association.

9 I'd like to start off by saying I'd much rather oppose a
10 person's bill than a person's confirmation. It's a difficult
11 situation. I've known Stan probably for most of the 15 years
12 he's been in state service.

13 I submitted a letter yesterday which outlines our
14 concerns about the direction of the Department. And I think
15 probably about midway through Mr. Cubanski's testimony, he hit on
16 the areas that CSEA is vitally concerned about.

17 We have seen proposals for contracting out of jobs that
18 are historically done by state employees from the Department. We
19 have attempted to restore those positions in the budget. With
20 the help of the Legislature, we were successful in many instances
21 to attempt to block those, only to find that most of our efforts
22 have gone out the window.

23 We believe that in the area of block grant legislation,
24 the Legislature has spoken several times about block grants.
25 They don't believe that this is a good proposal, at least in this
26 particular area, and CSEA agrees.

27

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1 We see these cuts, and these block grants, as merely an
2 attempt to reduce state employees who happen to be doing a very
3 good job. Our quality of work is never questioned. It's simply
4 to reduce the numbers. And this is an extremely difficult thing
5 for us to deal with, and it's very difficult for our members to
6 accept.

7 We are also concerned, I think, about some of the
8 statements that were made during the hearing on the
9 reorganization that was held last week by the joint Senate and
10 Assembly -- I believe it was a subcommittee of Health. In those
11 hearings, we were -- certainly came away with the impression
12 we're going to see more block grants; we're going to see more
13 state employees reduced, whether they're doing a good job or not,
14 or whether they're efficient or not is immaterial. I believe
15 there was testimony from Mr. Cubanski which said the he has
16 directed his directors in preparation of the new budget, which I
17 presume they're working on now, to reduce staff. And they're
18 going to do this through innovative ideas.

19 Now, it seems to us like you have the cart before the
20 horse. It seems like what you do is, provide an efficient
21 operation, you tune up your delivery system, and subsequently you
22 have the number of staff necessary to make that thing function.

23 And it's for these reasons that CSEA is opposing this
24 confirmation.

25 CHAIRMAN ROBERTI: Thank you.

26 Any questions?

27 Further opposition?
28

1 MR. SCHILLA: Mr. Chairman and Members, my name is Peter
2 Schilla.

3 My purpose here today is to ask this Committee to
4 examine carefully the policies and actions of the Department
5 under the supervision and direction of Stanley Cubanski from the
6 point of view of the low-income beneficiary and the general
7 public.

8 There are four major areas of concern which have come to
9 the fore through consistent patterns that have been established
10 in actions on bills as well as the budget. The first is similar
11 to the point raised by CSEA, and from our point of view, what we
12 see is cuts in staff and services in many areas to the point that
13 we very nearly have an administrative repeal of existing law and
14 programs.

15 The second point is that the Department has repeatedly
16 ignored legislative direction and failed to provide information
17 necessary to legislative decision making.

18 The third is that the Department has cut back on the
19 development of a central public health and other information,
20 especially as it relates to the needs of service populations and
21 has suppressed information which has been requested by the
22 Legislature.

23 The fourth is that the Department under this
24 administration has been de-professionalized, and personnel
25 policies have resulted in tremendous reductions in managerial
26 capacity and subject knowledge, while layers of bureaucracy have
27 been added to the system.

1 And I do have examples of these problems. I'm not
2 saying that all of this is a personal responsibility of Mr.
3 Cubanski, but he has taken in other hearings the responsibility
4 for most of these policies.

5 That is the summary of our opposition.

6 CHAIRMAN ROBERTI: Thank you very much.

7 Any further questions?

8 Is there any further opposition?

9 Mr. Cubanski, you might close if you would like to.

10 MR. CUBANSKI: I would like to just briefly respond to
11 both of the gentlemen who have come up here in opposition.

12 First, in regard to CSEA, I think to set the record
13 straight, yes, the Governor's policy is clear in terms of size of
14 state government.

15 I think in terms of policy of the administration,
16 however, things that need to be said in our defense, we have a
17 policy of no layoffs. Not one employee in the Department of
18 Health Services has been laid off since this Governor has been in
19 office; not one will be.

20 Number two, as Mr. Lyall indicated, he and I have known
21 each other approximately 15 years. I first encountered Mr. Lyall
22 when I was employed by the State Personnel Board, and prior to
23 the establishment of the Department of Personnel Administration,
24 the State Personnel Board had responsibility for classification
25 of state positions and recommending to the Legislature what state
26 employees' salaries should be.

27

28

1 Mr. Lyall and I sat on opposite sides of the table on a
2 number of occasions in the setting of salaries for agricultural
3 employees in the Department of Food and Agriculture, in the
4 setting of salaries for educational employees in the Department
5 of Education, setting of salaries for firefighters in the then
6 Division of Forestry.

7 We had some disagreements, but at the same time,
8 Mr. Lyall, if brought back here, will testify that we tried to be
9 objective and fair and always treated state employees as fairly
10 as they deserve to be, and that was very fairly.

11 Lastly, in terms of my concerns for employees, while
12 with the State Personnel Board, I also worked in the Personnel
13 Board's affirmative action programs, did extensive reviews of
14 departments, primarily in the Division of Forestry, in the
15 Department of Food and Agriculture, and was personally
16 responsible for developing many upward mobility paraprofessional
17 patterns for clerical employees to move upward to higher level
18 ranks within the Department.

19 I think all of these demonstrate some concern for my
20 employees and for other employees.

21 Response to Mr. Schilla, I would simply like to say that
22 the primary thing that bothers me is that he has indicated that
23 on a number of occasions the Department of Health Services has
24 withheld information or has not made information available to the
25 Legislature. That seems to be the most serious allegation.

26 But from my perspective, we have been late on occasion
27 in the Department. We have been wrong on occasion in the
28

1 Department. But it's my policy and the policy of the
2 administration in terms of working with the Legislature to have a
3 healthy respect for this body, and to provide you with all the
4 information you need to make decisions, whether it be on specific
5 bills, whether it be on the budget, whether it be on anything
6 that impacts the Department.

7 I extend that commitment to you today. We will be as
8 cooperative as we can with you. We will provide you information
9 to the extent of our resources to enable your decision making to
10 go forward.

11 CHAIRMAN ROBERTI: Thank you very much.

12 MR. CUBANSKI: I have nothing further.

13 CHAIRMAN ROBERTI: Do I hear a motion?

14 SENATOR CRAVEN: So move.

15 CHAIRMAN ROBERTI: Senator Craven moves Mr. Cubanski's
16 confirmation be recommended to the Floor.

17 SENATOR MELLO: Mr. Chairman, substitute motion.

18 I think there are a lot of unanswered questions there
19 that came up here today, including the one that I was pursuing
20 here.

21 I would move that as a substitute motion, Mr. Cubanski's
22 hearing be delayed until we return in August.

23 CHAIRMAN ROBERTI: You mean the vote?

24 SENATOR MELLO: The vote, yes.

25 CHAIRMAN ROBERTI: Any discussion or debate on the
26 motion --

27 SENATOR CRAVEN: If I may --
28

1 CHAIRMAN ROBERTI: -- that the vote be delayed until the
2 first meeting in August?

3 If I might address the point, I frankly am inclined to
4 vote for your confirmation. However, I am concerned about the
5 confusion as to some documents being supplied to the Legislature,
6 especially regarding the citing of toxic, or rather the clean up
7 of toxic waste dump sites. I would like to have that
8 straightened out, first because the information in and of itself
9 is important for us to make decisions, and secondly, because I
10 think it will establish a certain amount of rapport.

11 A number of Members have complained to me that the
12 Department of Health Services probably is the department which
13 causes us the greatest amount of problems, just getting
14 information so we can make our decisions. We don't really have
15 that same problem, except on an occasional interim irregular
16 basis, with any other department, because the relationship on
17 getting information is very good.

18 The Department of Health Services, many Members -- maybe
19 they're right and maybe they're wrong -- but there is this
20 feeling as a recurrent complaint that we can't get the
21 information.

22 The executive departments are set up to administer the
23 laws which the Legislature passes. We do not have the staff or
24 the administrative capability to come up with this information
25 ourselves, and accommodating government demands that we have to
26 get that kind of information.

27

28

1 So, I say for two reasons, first, because the
2 information itself is so important; and secondly, because I think
3 we have to establish this kind of relationship where the
4 information comes to us on a ready basis and not to the point of
5 having to extract teeth or things of this nature, that maybe we
6 have a chance of getting the information.

7 So, I would like some kind of relationship where we can
8 obtain this kind of information with you, and I would say that is
9 the major objection in my mind.

10 That being the case, I suspect that Senator Mello's
11 point is well put, just to give us time to work this out with
12 you. And I don't view it in my own mind as an attempt to deny
13 you confirmation. I expect it will be forthcoming, if this can
14 be worked out, but I do think many Legislators have this concern
15 with your Department, not totally with you as a person, but I
16 think the toxics issue of the dump sites that were cleaned up is
17 a specific case in point which you apparently were involved in.
18 I can't tell myself whether it's for real or not for real as to
19 whether this information was supplied. Maybe it's just a
20 misunderstanding.

21 MR. CUBANSKI: Mr. Chairman, with your indulgence, a
22 last comment on my part.

23 You much more so than I are well aware of the
24 sensitivity and the complexity of issues that come before this
25 House.

26 Within the Department of Health Services we have
27 approximately 4,000 employees against a state work force of
28

1 roughly 225,000 employees. We represent a couple percent of
2 state service.

3 However, in terms of the issues that this House looks
4 at, my Department looks at approximately 20% of all of the bills
5 that come before you.

6 I admit we have a very complicated Department. We work
7 in hundreds of different program areas, have a very sensitive
8 role to play within state government and within California as a
9 whole.

10 I want to make these comments acknowledging that we work
11 as hard as we can within the Department, all 4,000 employees, to
12 provide you whatever information you need.

13 We will provide you the toxics information if you
14 haven't get gotten it, but I just wanted you to know that both me
15 and the other 3999 employees who are left behind today will
16 continue to cooperate with you.

17 CHAIRMAN ROBERTI: Thank you, Mr. Cubanski.

18 Senator Petris.

19 SENATOR PETRIS: If we're going to put this over, then I
20 would ask that you get the information for me regarding the
21 percentage of cases referred --

22 MR. CUBANSKI: No problem.

23 SENATOR PETRIS: -- to your counsel which have been
24 forwarded to the A.G., and the percentage which haven't.

25 MR. CUBANSKI: The only comment I would make, Senator,
26 is sure, we can get that. It's been so short a period of time,
27 however, that the numbers will be very small.

28

1 SENATOR PETRIS: That's all right. I understand.

2 Thank you.

3 CHAIRMAN ROBERTI: Senator Mello's motion is before us,
4 and that is that the vote on Mr. Stan Cubanski's appointment be
5 taken up the first meeting after the recess in August.

6 Secretary will call the roll.

7 SECRETARY WEBB: Senator Doolittle. Senator Mello.

8 SENATOR MELLO: Aye.

9 SECRETARY WEBB: Senator Petris.

10 SENATOR PETRIS: Aye.

11 SECRETARY WEBB: Senator Craven. Senator Roberti.

12 CHAIRMAN ROBERTI: Aye.

13 The vote is three to nothing. Mr. Cubanski's vote will
14 be taken up the first Wednesday after the recess in August for
15 purposes of a vote only.

16 Thank you very much.

17 MR. CUBANSKI: Thank you, Senator.

18 (Thereupon this portion of the Senate
19 Rules Committee hearing was terminated
20 at approximately 4:00 P.M.)

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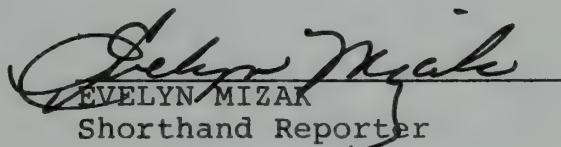
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EVELYN MIZAK
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SENATOR HENRY J. MELLO

SENATOR NICHOLAS PETRIS

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PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

ALAN K. BROWNE, Member,
Teachers' Retirement Board

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Proceedings

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Governor's Appointee:

ALAN K. BROWNE, Member
Teachers' Retirement Board

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Questions by CHAIRMAN ROBERTI

Healthier Funds
Rate of Return
Reviewing Investments
Emergencies

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Questions by SENATOR PETRIS

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Suggested Changes
Papan's Committee Report
Unfunded Liability

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P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: Governor's Appointee appearing today,
Mr. Alan K. Browne, Member of the Teacher's Retirement Board.

MR. BROWNE: Mr. Chairman, Members of the Senate Rules
Committee, I'm Alan D. Browne.

I did not prepare any material on my qualifications
because I felt that your staff had provided a great deal of
material, so I didn't want to duplicate it.

I'd be very pleased to answer any questions.

CHAIRMAN ROBERTI: Thank you.

Any questions of Mr. Browne?

What ideas do you have, Mr. Browne, on making the
retirement funds healthier?

MR. BROWNE: More productive?

CHAIRMAN ROBERTI: More productive, yes.

MR. BROWNE: Well, I think the plans that are under way,
which have been established by the constitutional amendment
giving much more availability of investment incentives, I think
that the fund from its years of being almost a fixed income fund
is now beginning to blossom and providing many more opportunities
for the fund to invest in equities and related securities. In
order to get maximum return and growth, I think this is the best
way to make it healthy.

CHAIRMAN ROBERTI: Over the last couple of years, what
has been the rate of return?

1 MR. BROWNE: It's been -- over all? Well, the current
2 return is, on the fixed income, is about $11\frac{1}{2}$ on the average; the
3 stock fund is about $4\frac{1}{2}$ percent; on the short term money fund,
4 which is handled by the State Treasurer's Office, it's around
5 $11\frac{1}{2}$.

6 CHAIRMAN ROBERTI: Isn't the stock fund kind of low,
7 then?

8 MR. BROWNE: No, I think this is a fair return. It's
9 been very close to the various averages that have been used for a
10 measure. And I think that this will continue to improve as the
11 new fund managers -- because it's been divided and will be
12 divided among a great many more fund managers.

13 The only way you can really see how good your funds are
14 being operated is to give these various investment managers a
15 certain amount of latitude, review their results, and it's done
16 monthly, more or less monitor their reports.

17 CHAIRMAN ROBERTI: What system does the Board adopt as
18 far as reviewing investments, individual investments getting the
19 best possible return, and maybe a certain stock should be sold?
20 How would you review that?

21 MR. BROWNE: Well, the staff of STRS does have a
22 continual review process. Each one of the investment managers is
23 assigned a part of the fund to handle. It's again reviewed by
24 Wellington Associates and reports to the Board, runs down and
25 shows a great deal of graphic materials, statistical data in the
26 report. And we also interview the various fund managers when
27 they come aboard. And it gives us a very good idea of how
28 they're doing.

1 On occasion, when they seem to delve into an area which
2 might be sensitive, like Phillips Petroleum, we question that.
3 On the other hand, if they buy ABC stock and it turns out very
4 nicely, we give them a plus.

5 But you have to do it on the average. You can't do it
6 on a one issue or one month basis.

7 CHAIRMAN ROBERTI: If there's suddenly some emergency,
8 say a Phillips Petroleum problem, how does that come to your
9 attention?

10 MR. BROWNE: Primarily because of the proxy battle and
11 the request for proxies from the owners of the securities. And
12 we have our own research to be sure that we're doing a fiduciary
13 job in making our decisions known. And generally the fund has
14 got very strong policy against some of the so-called green mail,
15 black mail, and golden parachute type approach.

16 The great concern we have is that the stock holders are
17 not being given a fair shake, and when we have the very large
18 investment that PERS and STRS have, it's very important to be
19 very vocal about your position.

20 CHAIRMAN ROBERTI: Any other questions of Mr. Browne?
21 Senator Petris.

22 SENATOR PETRIS: How do you do that? Do you send people
23 to the board meetings, share holders meetings of the various
24 companies?

25 MR. BROWNE: We do not do that. We rely on the fund
26 managers to do that. But when there is a problem, we will send
27 people to address themselves to the boards.
28

1 As a matter of fact, in the Phillips Petroleum
2 situation, we did send one of our members of the Board to read a
3 report of our disapproval and that we're voting against their
4 proxy program.

5 But again, we don't have that many real reasons to do
6 it. When the proxy material comes to us, it's reviewed by staff
7 and by some of our consultants.

8 SENATOR PETRIS: You must have those pouring in every
9 day.

10 MR. BROWNE: Well, there's a lot of paper work, and we
11 have increased our staff just to do this, because for the
12 individual Board members, they couldn't possibly review this
13 material.

14 SENATOR PETRIS: I wouldn't think so.

15 How long have you been on it now?

16 MR. BROWNE: Well, I was appointed in September. My
17 first meeting was in November.

18 SENATOR PETRIS: On the basis of what you've seen so
19 far, as a person who's had a career in this field with our
20 biggest bank, are there any basic changes that you think ought to
21 be made, either in the role of the Board? For example, should
22 all the investment decisions be made strictly by professional
23 managers, number one?

24 Should they be exclusively internal people, or should
25 they also include people that are hired as consultants and
26 experts on the outside?

27 I'll stop with those three.

28

1 MR. BROWNE: Very good.

2 Senator, I think to begin with, the transition from the
3 combined PERS-STRS fund into the current split, and the
4 development of a professional staff has been very good. There is
5 still a problem in filling some of the vacancies because some of
6 the --

7 SENATOR PETRIS: Because of the pay?

8 MR. BROWNE: Part of that, and again, it's a question of
9 the qualifications. Sometimes you can have a likely prospect,
10 but for one reason or another, doesn't always fulfill your
11 objectives.

12 But the investments decisions that are being made have
13 to be split. The Board itself has a preponderance of teachers,
14 constitutional officers and their representatives. There's very
15 little from the outside which have any professional investment
16 experience.

17 You have a chief investment officer; you have his staff;
18 and then you have your fund managers; and then you have the over
19 all review of the fund management performance. And that comes to
20 the Board, is kicked around, and as I say, the managers of those
21 funds have to appear and present their case. And they're given a
22 very careful review.

23 I think in the short time I've been aboard, there's been
24 very good progress.

25 SENATOR PETRIS: So, there's no basic changes in the
26 structure or method of doing business you would suggest?

27
28

1 MR. BROWNE: At this time, as of right now, I think the
2 best thing is to let the legislation, which has given the power
3 to the STRS Board, continue to operate that way.

4 SENATOR PETRIS: Are you familiar with the reports of
5 Mr. Papan's committee on that?

6 MR. BROWNE: Yes, I am.

7 SENATOR PETRIS: Are there any conclusions there that
8 you think would be helpful?

9 MR. BROWNE: Based on his proposed legislation, I would
10 be opposed to it. I think, again, it would take away the
11 responsibility for the management of the fund for the benefit of
12 the teachers, and it raises another issue. And I think that it
13 would interfere with the investment process. The pool investment
14 fund has done an outstanding job in short term money, but I think
15 the cash flow monthly going into the State Teachers' Fund,
16 without a real program of investment, would kind of louse it.

17 SENATOR PETRIS: Do you think the fund, because of its
18 enormous income -- you know, the last fiscal year it was almost
19 1½ billion -- can catch up to the unfunded liability and
20 eliminate it?

21 MR. BROWNE: That is certainly a goal, and again, it's a
22 question of the contributions. I think in the past, the county
23 superintendents have not been as liberal with their
24 contributions, and of course the state has been in and out.

25 But I think with the growth in the fund and good
26 management, and hopefully some changes ultimately towards the
27 benefits for the teachers, it'll get away from its unfunded
28 state.

1 SENATOR PETRIS: How long would it take?

2 MR. BROWNE: I would say within ten years.

3 SENATOR PETRIS: Thank you.

4 CHAIRMAN ROBERTI: Thanks, Senator.

5 Any other questions? Hearing none, Senator Craven.

6 SENATOR CRAVEN: I would like to move the nomination to
7 the Floor.

8 CHAIRMAN ROBERTI: Senator Craven has moved Mr. Browne's
9 confirmation to the Floor with a do pass recommendation.

10 Any opposition?

11 Seeing none, the Secretary will call the roll.

12 SECRETARY WEBB: Senator Doolittle.

13 SENATOR DOOLITTLE: Aye.

14 SECRETARY WEBB: Senator Mello. Senator Petris.

15 SENATOR PETRIS: Aye.

16 SECRETARY WEBB: Senator Craven.

17 SENATOR CRAVEN: Aye.

18 SECRETARY WEBB: Senator Roberti.

19 CHAIRMAN ROBERTI: Aye.

20 The vote's four to nothing, confirmation is recommended
21 to the Floor.

22 Congratulations. We feel you know your business after
23 talking with you.

24 MR. BROWNE: Thank you, sir.

25 (Thereupon this portion of the Hearing
26 before the Senate Rules Committee was
27 terminated at approximately 2:15 P.M.)

28 --oo0oo--

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State Public Defender

J. RICHARD GLADE, Member,
Unemployment Insurance Appeals Board

MICHAEL CALLAHAN, Member,
Industrial Welfare Commission

DARLENE E. RUIZ, Member,
Water Resources Control Board

BRAD HAYS
California Manufacturers Association

WILLIAM DU BOIS
California Farm Bureau Federation

MATT ANDERSON
California Forest Protective Association

JESSE GARCIA, National Vice-President,
Mexican-American Correctional Association

BOB RUIZ
American G.I Forum

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JOSEPH HENAO, Past Chairman,
California Hispanic Republican Council

TONY AMADOR, Deputy Director,
Department of Employment Development

MICHAEL GROSHONG, Former Member,
Local Public Utility District

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Governor's Appointees:

FRANK O. BELL, JR.
State Public Defender

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Re: Lobbying
Re: Staffing
Re: Private Contract Attorneys
Re: Budget Increase
Re: Level of Participation

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J. RICHARD GLADE, Member
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MICHAEL CALLAHAN, Member
Industrial Welfare Commission

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DARLENE RUIZ, Member
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P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: We will now have Governor's Appointees, Frank Bell, State Public Defender.

Hello, Mr. Bell. We'll ask you the same question we ask all the Governor's Appointees. I guess in your case it's why you feel you're qualified to retain this position?

MR. BELL: Mr. Chairman and Members of the Committee, I graduated from the San Francisco State College in 1963 with a degree in business and emphasis in finance. I'm a graduate of Hastings College of Law in 1966. While I was there in my second year, I worked on the Hastings Law Journal.

Immediately after graduation, I was employed as a Deputy State Attorney General in the Criminal Division here in Sacramento until 1967, when I returned to San Francisco to go into private practice in both civil and criminal practice.

In 1970, I became the Chief Assistant in what was to become the Federal Public Defender's office for the Northern District of California. I was there for 12 years until 1982, when I returned to private practice, and I was appointed by the Governor to this position in May of last year.

CHAIRMAN ROBERTI: Thank you.

Let me ask you a question. When you first assumed this position you, I guess, had a regulation within the office that you were no longer going to lobby legislation.

Some people have felt that that would put defendants' rights at a disadvantage, since the prosecutorial state agencies do lobby.

1 What was your reason for it?

2 MR. BELL: Well, I would say that what happened was
3 entirely misconstrued. I'd like to explain that.

4 There had not been a State Public Defender since
5 January. When I met with the heads of the three offices before I
6 assumed office, it became apparent to me that really the offices
7 were operating on somewhat of an ad hoc basis, and there really
8 was no uniform consistent policy about legislation.

9 I did, in fact, on my first day in office, put out a
10 memorandum indicating that we were to withdraw the positions
11 taken until I had reviewed them, and that no one was to engage in
12 legislative advocacy without my prior permission.

13 It was not my intention to completely eliminate our
14 legislative role, but I simply wanted to establish some control
15 and some policy influence over these.

16 CHAIRMAN ROBERTI: Has the office under your direction
17 lobbied on any bills?

18 MR. BELL: We have. We're going to concentrate on what
19 we deem to be the most important ones. Obviously, in our
20 judgement, the death penalty measures are the most important. We
21 have a position on those and have testified on a number of those
22 bills. We are continuing to formulate positions and will be
23 involved in most of the death penalty legislation.

24 We feel that no matter how one stands on that issue, we
25 have a perspective to present to the Legislature, and we can
26 perform a service by ensuring that the defense perspective is
27 understood, and that it's aggressively presented. So, we will be
28 involved in most of that legislation.

1 We also took a position on SB 46, and we will continue
2 to take positions on other major pieces of legislation within our
3 resources.

4 I see it primarily as a question of allocation of
5 resources. We, as this Committee well knows, we have half the
6 staff of what we had in 1982-83, and we simply have an awful lot
7 of work to do and not a great number of people to do it.

8 CHAIRMAN ROBERTI: Thank you, Mr. Bell.

9 Any questions? Senator Petris.

10 SENATOR PETRIS: What was your position on 46? I'm
11 curious.

12 MR. BELL: We opposed it.

13 SENATOR PETRIS: I'm on the committee, and I heard the
14 testimony only in brief because I was away that week for a couple
15 of hearings.

16 What is the procedure now that you've established for
17 people in your shop to express your office's viewpoint?
18 Obviously, they can't go off individually on their own. Any
19 viewpoint expressed before one of our committees has to be yours.
20 That's the only proper way to do it.

21 What is the procedure they're now required to follow?

22 MR. BELL: Well, the coordination of our legislative
23 effort is being done by Harvey Zall, the chief Deputy in the
24 office. Mr. Zall, when he sees legislation that he thinks might
25 concern our office, our office caseload, something on which we
26 feel we have some special expertise to offer, would then
27 circulate the information about that legislation to the office
28

1 generally, asking for comments. Anyone in the office -- we've
2 informed everyone that Mr. Zall is in charge of the legislative
3 process and have invited them to make any comments that they want
4 to him in helping us form our policy on particular bills.

5 SENATOR PETRIS: Do you also coordinate in any way with
6 the feeling of local defenders at the county level?

7 MR. BELL: We have --

8 SENATOR PETRIS: You handle just appeals, don't you?

9 MR. BELL: Yes. We exchange letters with Mr. Briskin,
10 who represents CACJ and CPDA as well as Margie Schwartz, and we
11 try to coordinate as best we can. Obviously, we're not as active
12 as we had been in the past, and I understand that there were some
13 complaints, and perhaps legitimate ones, that we had neglected
14 this part of the legislative process in the Senate, and it's our
15 intention to take a more active role in the Senate than we have
16 in the past.

17 SENATOR PETRIS: You don't feel that the memorandum that
18 Senator Roberti referred to has discouraged some of your people
19 from coming forth, not to us but to you, with ideas that should
20 be expressed, opinions on a bill?

21 MR. BELL: I think it was interpreted that way in the
22 beginning. It was unfortunate; it was not that intent, and I
23 hope that that has been overcome. It's certainly not -- we've
24 indicated, too, that if -- even if the office is not going to
25 take a position, anyone in the office is free to appear as a
26 private citizen or as a criminal defense lawyer and testify, and
27 give their own views on that.
28

1 SENATOR PETRIS: That's not easily done.

2 MR. BELL: That's true, but we -- it's not my intent to
3 discourage anyone from the office from expressing their views,
4 and I sincerely hope that --

5 SENATOR PETRIS: Have you explained to them that if they
6 have very strong feelings on a matter and they want to come over
7 on occasion -- obviously they can't be running over every day --
8 to give their personal private opinion, that arrangements could
9 be made for that? Do they know that?

10 MR. BELL: I have tried to communicate that as best I
11 can. I think Mr. Zall has, too. I believe, as I recall, there
12 was a memorandum sent to the staff to express that.

13 SENATOR PETRIS: How many are there now on your staff?

14 MR. BELL: We actually have 53 attorneys, and when you
15 subtract administrative time, it leaves about 48 attorney years
16 on our staff at the present time.

17 SENATOR PETRIS: That's about half of what it was
18 before?

19 MR. BELL: Approximately half.

20 SENATOR PETRIS: Have you had to bow out of important
21 cases as a result? I know there was one public discussion on one
22 major case that you felt you just absolutely weren't equipped to
23 handle because of the shortage or lack of personnel for that
24 particular case. Are there others?

25 MR. BELL: Actually, I think that in many ways the
26 opposite is true. We have tried to concentrate our resources on
27 the serious cases, including death penalty cases, life without
28

1 parole cases, and specifically homicide cases and other cases
2 with sentences of 25 years and up. We obviously also take other
3 cases, too, so in many ways, in terms of the seriousness of the
4 offense and the difficulty of finding competent lawyers, I
5 believe that we are more dedicated to channeling our resources in
6 that area.

7 The problem with that particular case was one of timing.
8 We had received what seemed to be an inordinate number of
9 appointments in a fairly short period of time. We certainly
10 agree that that is the kind of case that we should handle, it's
11 just that it was the tenth appointment in less than six months.
12 And we had never received as many appointments, and certainly
13 there were other cases of great seriousness, cases with records
14 in excess of 20,000 pages that we had received previously. So,
15 it was really a question of timing.

16 We were concerned that if we were counsel of record, we
17 had a responsibility to provide representation to that
18 individual, and we were simply unable to do that at that moment.

19 SENATOR PETRIS: What percentage of your total case load
20 is farmed out to private attorneys by contract?

21 MR. BELL: We -- only virtually an insignificant amount.
22 We do all of our own cases in-house, with the possible exception
23 of mentally disordered sex offender trials, in which we try to
24 contract with local attorneys or public defenders' offices,
25 because those are not particularly within our expertise, and the
26 law does indicate that the State Public Defender has the
27 responsibility of representing those persons. But otherwise, we
28 do all of our own cases in-house at the moment.

1 SENATOR PETRIS: I guess you can't handle as many as the
2 office did before, though. What happens to the others?

3 MR. BELL: Well --

4 SENATOR PETRIS: You only have a tiny number going to
5 private attorneys. With half the staff, you can't possibly
6 handle the same load unless you limit everybody's time, and then
7 maybe put a handicap on them from the standpoint of being
8 thorough and comprehensive in their work.

9 Isn't there a loss there somewhere?

10 MR. BELL: Well, certainly the great, great majority of
11 cases are going to go to private appointed counsel.

12 Now, the court system has, pursuant to legislation,
13 adopted by this Legislature shortly after the budget cuts, has
14 adopted a contract administrator program in order to recruit and
15 identify the most competent lawyers to match them with the right
16 cases and to provide a resource for consultation of those
17 lawyers. It remains to be seen how that is going to work, and
18 who's going to be doing it, but we feel that that will help raise
19 the level of representation by private lawyers.

20 SENATOR PETRIS: What about the cost? How are they
21 paid?

22 MR. BELL: They will be paid directly -- you mean the
23 contract administrator will be paid?

24 SENATOR PETRIS: No, the lawyer the court appointed.

25 MR. BELL: They will be paid directly out of fund
26 appropriated for that purpose at a rate of \$50 an hour in
27 noncapital cases and \$60 an hour in capital cases.
28

1 SENATOR PETRIS: I remember that; that's my bill.

2 How are you going to get lawyers that compete with other
3 lawyers at that rate? Is that why you're having trouble finding
4 them?

5 MR. BELL: You mean in terms of our own staff?

6 SENATOR PETRIS: No, the appointed counsel.

7 MR. BELL: I think that criminal appellate work is a
8 very specialized area of the law, and I would agree that there
9 are not large numbers of criminal lawyers who are experienced and
10 competent to do appellate work. Those numbers are growing. I
11 know that there's a movement now, in the First District Court of
12 Appeal, to do a clinical program of maybe three to four days in
13 length to train greater numbers of those lawyers.

14 But there's no question that there's a problem in
15 getting sufficient numbers of qualified lawyers to apply and to
16 do high quality work.

17 The one thing I wanted to say it that it's certainly, no
18 matter what moves we may make or changes we may make in the
19 office, one thing we're not going to sacrifice is the quality of
20 our work. And while I believe that productivity is important, it
21 can't be done at the expense of quality representation.

22 SENATOR PETRIS: Well, I'm sure of that. I've heard
23 some very good comments on your standards from private counsel.
24 We have letters here from individuals, from the Criminal Defense
25 Bar of Northern California, from the national group, praising you
26 very highly, which presents me with kind of a dilemma.

1 I think you come to this with a tremendous background in
2 this field and very good qualifications, and yet your boss cut
3 your budget in half before you even took it over. I think that's
4 the kind of tying one hand behind you that's not fair.

5 What are the prospects of increases in the budget in the
6 future, and what are your plans? Are you trying to persuade the
7 Governor to open it up a little and have more people?

8 MR. BELL: I can't think of a single administrator or
9 office head who wouldn't like to have more people.

10 I can tell you --

11 SENATOR PETRIS: But not all administrators have had
12 their budgets cut in half.

13 MR. BELL: True. I can only tell you that I feel that
14 we're in the process of instituting a data system about what
15 we're doing, and how much time it's taking us to do it, and why
16 we're effective, and that we are cost effective. It's my
17 intention to use that material to justify requests for increase
18 in staffing where we feel that that is necessary.

19 The real question, I think, is one that you raised and
20 touched on, is the balancing between the work of the
21 institutional defender, the State Public Defender in this case,
22 and the work of private counsel. In almost every system I know,
23 and I'm familiar with a number of state appellate systems
24 nationwide, there is always some sort of mix. For example, in
25 the state of Michigan, I think the state defender there handles
26 about 25 percent of the cases, and private counsel handle about
27 75 percent of the cases. So, there has to be some sort of
28 balance.

1 The questions that we have that we cannot answer at the
2 moment are just exactly how many serious cases are there out in
3 the system that would require the kind of work that the State
4 Public Defender does to assure the court that quality
5 representation will be supplied. The court system doesn't have
6 that information; we don't have that information, although we're
7 trying to develop it, and that's the purpose of the information
8 that we're trying to develop so that we can justify increases in
9 our staff.

10 SENATOR PETRIS: Well, as I recall, the Governor opposed
11 the creation of the office in the first place very vigorously.
12 Then I note the first act that he does after he's Governor is to
13 chop it in half.

14 It indicates a continuation of his hostility toward the
15 office, and in marches Mr. Bell, who on first appearance looks
16 like he's playing the role of the executioner, and we're going to
17 chop this thing down.

18 But after learning, you know, where you're coming from,
19 and the work you did at the federal level, I know that's not true
20 at all.

21 But I am curious as to what you foresee. It doesn't
22 mean to restore within the first year all of the cuts, but from
23 what I hear from the other side, in the Judiciary Committee, we
24 had a Deputy Attorney General come in and he brought us the
25 transcripts, and he's one of the top trial men, and he has stacks
26 of transcripts, and he says he doesn't have time to work on them;
27 he takes them home.
28

1 Now, their staff is enormous compared to yours. Of
2 course, they handle all of those, and you handle, as you point
3 out, a certain percentage of them. But if their people have to
4 take that stuff home on their own time and work it on Saturday,
5 Sunday, I'm wondering what the Public Defender's people are
6 doing, who have a lot less people to work with.

7 MR. BELL: We're working Saturdays, Sundays and
8 holidays.

9 SENATOR PETRIS: Well, that shouldn't be necessary. I
10 think all of us lawyers, when we're preparing for trial, know
11 every day has to be used. But that shouldn't be 365 days a year.
12 Sooner or later it's going to tell on the quality of the work;
13 you're going to have burn out; you're going to have all kinds of
14 problems.

15 MR. BELL: I think that your comments are well taken.
16 The one advantage, of course, we have over the Attorney General
17 is that within certain limits, we do have some control of our
18 case load, and the courts have been generally cooperative in
19 relieving us from cases where we indicate that we simply can't
20 provide representation.

21 SENATOR PETRIS: What do they do then? Appoint counsel?

22 MR. BELL: Then they appoint private counsel.

23 The real question is, as I've indicated, you know,
24 what's the proper level of participation of the State Public
25 Defender.

26 SENATOR PETRIS: What do you think is the proper level?
27
28

1 MR. BELL: I can't give you a definite answer. I
2 believe that --

3 SENATOR PETRIS: Is it over 50 or less?

4 MR. BELL: Well, I would say probably something less
5 than 50 percent, to be frank. But I don't know where you -- once
6 you say less than 100 percent, I don't know really where you draw
7 that line.

8 I think this: I think that the State Public Defender
9 should be doing a substantial amount, maybe as much as 50
10 percent, of the real serious cases, the ones where the sentences
11 are 25 years to life. The reason that we chose that particular
12 -- the ones where the sentences are actually more than 15 years
13 to life is our top category of case, those are clearly the kinds
14 of cases that are going to have difficult issues, sophisticated
15 issues that require experienced appellate lawyers.

16 Our problem is that we cannot identify the numbers yet,
17 and that's what we're working on to do. I think the court system
18 is going to cooperate with us, and this contract administrator
19 program should be helpful, too.

20 So, I can only say to you that I'm proud to be
21 associated with the office. We do quality work, and we want to
22 be representing people in those serious cases. And we'll make
23 every effort to convince the administration that we need more
24 staff if that's what we find that we need.

25 SENATOR PETRIS: Thank you.

26 CHAIRMAN ROBERTI: If I might interject, in reading Mr.
27 Bell's resume and reviewing his work, I think actually it's a
28

1 very outstanding appointment who is working within the political
2 realities.

3 You don't have to comment on that, but that's the way I
4 view it. I feel it's a confirmation that should be recommended.

5 Any opposition?

6 SENATOR CRAVEN: Move confirmation to the Floor, Mr.
7 Chairman.

8 CHAIRMAN ROBERTI: Senator Craven moves confirmation to
9 the Floor.

10 Is there any opposition? Seeing none, the Secretary
11 will call the roll.

12 SECRETARY WEBB: Senator Doolittle.

13 SENATOR DOOLITTLE: Aye.

14 SECRETARY WEBB: Senator Mello.

15 SENATOR MELLO: Aye.

16 SECRETARY WEBB: Senator Petris.

17 SENATOR PETRIS: Aye.

18 SECRETARY WEBB: Senator Craven.

19 SENATOR CRAVEN: Aye.

20 SECRETARY WEBB: Senator Roberti.

21 CHAIRMAN ROBERTI: Aye.

22 The vote is five to nothing, confirmation recommended to
23 the Floor.

24 Congratulations.

25 MR. BELL: Thank you very much.

26 SENATOR PETRIS: Good luck.
27
28

1 CHAIRMAN ROBERTI: The next appointment is Mr. J.
2 Richard Glade, Member of the Unemployment Insurance Appeals
3 Board.

4 Mr. Glade, please tell us why you feel you're qualified
5 to assume this position?

6 MR. GLADE: For the record, Mr. Chairman, my name is
7 Richard Glade. I'm usually referred to as Pete.

8 Senator Roberti --

9 CHAIRMAN ROBERTI: How did that come about?

10 MR. GLADE: It's a long story, and I won't take your
11 time, except as a young person in a big family, I was -- at an
12 early age became very fond of potatoes, and Potato Pete is the
13 way it started, and eventually they dropped the Potato part, so
14 here I am.

15 My first job, gentlemen, involved the then newly enacted
16 Unemployment Disability Program. This goes back to 1947. I was
17 hired on to represent the voluntary plan carriers to help them
18 relate to the new law, to relate to the new regulations.

19 In that capacity, I also had responsibility for hearings
20 before the law judges, before the U.I. Appeals Board, with some
21 experience in court.

22 At that time, you'll remember, the voluntary plan
23 carriers had a majority of the D.I. coverage. As that coverage
24 waned as far as the private carriers were concerned, and more was
25 taken over by the state fund, I then moved in more directly to
26 the U.I. field, again with responsibility in terms of
27 legislation, administrative hearings, appeals to the Appeals
28

1 Board, and some court work. This continued for some 20-odd
2 years.

3 As recently as a year ago last fall, I was invited by
4 the Department of Employment to participate with a group of about
5 12 people in redrafting the taxing provisions of the U.I. Codes.
6 The work of this group resulted in AB 4000, which was passed by
7 the Legislature last year, and you'll recall that bill became an
8 agreed bill without opposition from management or labor.

9 And I mention that because I think that exemplified my
10 approach to the people in the U.I. Appeals Board and their staff,
11 the people in the Department of Employment, trying through this
12 period of time to relate to these people on these problems in a
13 constructive manner. And I hope, Mr. Chairman, as a lobbyist,
14 and while I was lobbying up until about 10 years ago, I was able
15 to relate to the Legislature in a constructive manner.

16 Frankly, I have enjoyed the people in both the U.I.
17 Board and their staff, in the Department. I've enjoyed the work
18 involved. And when the Governor extended this invitation to me,
19 frankly, I responded immediately and enthusiastically, and I'm
20 hopeful that this Committee will permit me to continue with this
21 program.

22 CHAIRMAN ROBERTI: Thank you, Mr. Glade.

23 Are there any questions? I want to ask a question.

24 Right now the Board votes on two-person panels?

25 MR. GLADE: Yes, sir; that's correct, if there's
26 agreement.

27 CHAIRMAN ROBERTI: Is that a permanent --
28

1 MR. GLADE: Yes, sir, it is. It's a two-person if
2 there's agreement. If there's not agreement, then it becomes a
3 three-person panel for the tie breaker.

4 CHAIRMAN ROBERTI: How do you know if there's agreement
5 or not? How does that work?

6 MR. GLADE: The first two people that are assigned in
7 rotation to the case, if they're in agreement, then the decision
8 is issued. If one of those two people disagrees, then it becomes
9 a third person. And in any case where the situation merits --

10 CHAIRMAN ROBERTI: Is the case reheard?

11 MR. GLADE: It's reconsidered; it isn't reheard. It's
12 simply reconsidered by the three individuals. It's discussed by
13 the three individuals with some frequency, and it maybe can't
14 become a three-to-nothing decision, or it may be a two-to-one
15 decision, depending on how the individuals relate to the problem
16 involved.

17 CHAIRMAN ROBERTI: And that is permanent; it's not to
18 cover any backlog situation?

19 MR. GLADE: That is permanent.

20 I might add, Mr. Chairman, that any member of the Board
21 in a case that's particularly interesting to the member or of
22 some significance, can call for a seven-member decision. And at
23 any time, any one of us can propose a precedent decision.

24 CHAIRMAN ROBERTI: If one of the members does propose
25 that, I take it that that then becomes the order?

26 MR. GLADE: That becomes a matter for consideration by
27 the Board.
28

1 CHAIRMAN ROBERTI: By the entire Board?

2 MR. GLADE: By the entire Board if the entire Board is
3 in agreement for the preparation of a precedent decision. Then
4 that decision is prepared, considered, and then voted upon.

5 CHAIRMAN ROBERTI: If the Board votes four-to-three that
6 this should be a precedent decision, what happens under those
7 circumstances?

8 MR. GLADE: If the Board votes four-to-three, then it
9 will become a precedent decision. The staff will be instructed
10 to prepare such a decision, and then we'll look at it again.

11 CHAIRMAN ROBERTI: So, there's two votes: one to make
12 it a precedent decision; and the second is the actual --

13 MR. GLADE: To pass it out, yes, sir.

14 CHAIRMAN ROBERTI: -- vote on the measure, or whatever
15 you call it?

16 MR. GLADE: Yes, sir.

17 CHAIRMAN ROBERTI: One other point. How many members
18 does it take to have the entire Board hear?

19 MR. GLADE: One.

20 CHAIRMAN ROBERTI: Just one?

21 MR. GLADE: Yes, sir.

22 CHAIRMAN ROBERTI: When that happens, then all seven --

23 MR. GLADE: All seven members participate in the
24 decision.

25 CHAIRMAN ROBERTI: Senator Petris.

26 SENATOR PETRIS: I'm interested in a couple of areas.
27 One of them is due process.
28

1 There's been a tremendous opening in the law through the
2 trial courts and all the way up through the Supreme Court on
3 wrongful termination cases. ARCO, I guess, is one of the leading
4 ones.

5 Now I understand one of the appellate courts has ruled
6 that for purposes of wrongful termination -- I suppose first they
7 exhaust their administrative remedies, then they go through your
8 Board -- that all of the evidence taken in your hearings, or
9 prior, I guess the administrative hearings below; you don't do
10 that because you're on the appellate level.

11 MR. GLADE: The law judges, Senator, are directed by the
12 Appeals Board, will conduct the hearing, yes. The Board itself
13 will not conduct the trial.

14 SENATOR PETRIS: I understand that the court decision,
15 which I haven't seen, permits that entire proceeding, the
16 transcript I suppose, to be used in evidence for the wrongful
17 termination case. I'm not clear whether that pre-empts the
18 parties from developing further evidence or not.

19 Are you familiar with that?

20 MR. GLADE: I don't think it does pre-empt the parties
21 from developing additional information. One of the things that
22 we do notice, and this comes along with some frequency, the
23 issues that come before our referees and our Board in this
24 context will involve the question of misconduct discharge as it
25 relates to unemployment insurance. And the only authority we
26 have is to adjudicate that problem.

27

28

1 Now, it does come into our process with sworn testimony,
2 with a transcript that'll include exhibits, and we're finding
3 more and more that, yes, there is an effort being made to use, in
4 effect, use our proceeding as a discovery type proceeding as an
5 adjunct to, say, a civil action involving unlawful discharge.
6 Now, the civil action --

7 SENATOR PETRIS: Excuse me, the comment I have is that
8 it becomes the sum total evidence in the civil case in the trial
9 court, which I find hard to --

10 MR. GLADE: I understand.

11 SENATOR PETRIS: The reason I'm going into it is that
12 for a long time I've been concerned about the mechanical,
13 physical state of the evidence in those hearings.

14 MR. GLADE: Yes.

15 SENATOR PETRIS: Your Board has recently decided to get
16 away from court reporters all together and go for some kind of
17 electronic system.

18 MR. GLADE: By and large, yes.

19 SENATOR PETRIS: Being nudged by the federal government
20 which supplies a great deal of the budget.

21 I have a lot of misgivings on that, because the Board
22 has not hired the professionals who come in with a hundred miles
23 of wire, speakers and all that stuff. But they just, in many,
24 many cases, we've had hearings in one of our legislative
25 committees indicating somebody brings along a tape recorder,
26 whoever happens to remember it, and sits it on the table, and
27 when you try to transcribe that stuff, you don't know who's
28 talking half the time; it's not legible.

1 Now, if the entire record at that administrative hearing
2 is going to duplicate the superior court's record, I think you
3 have a very serious problem of due process because it can hurt
4 either side. It's not just the claimant.

5 Wrongful termination is becoming a very, very big area
6 in the law where executives are fired. It isn't a matter of the
7 blue collar man and the coverall person, but the high placed
8 executives are being fired because they won't carry out an order
9 which that executive knows is a violation of the law in the
10 environmental area and other areas.

11 I'm wondering what the Board's position is going to be,
12 and what your position is on trying to adopt some safeguards?

13 MR. GLADE: I appreciate the question, Senator Petris,
14 because I share your concerns. And in my personal view, I really
15 think we're going to have to get back more to the court reporter
16 system rather than the electronics.

17 And I say that for this reason: in these cases that
18 you're referring to, and there are other cases, these cases are
19 extremely important, and they do require the services of a
20 competent reporter as distinct from a mechanical recording.

21 Now, there's one other thing that's happening in our
22 area, and I think our Board's secretary is here this afternoon
23 and can relate to this better than I can, but we're in the
24 process of being sued right now in terms of time lapse, in terms
25 of advancing the pace of our decision process. And if we're
26 going to become subject to an acceleration of our process, I
27 think it's going to require the help of more court reporters, the
28

1 simultaneous preparation of the transcripts, almost, to have a
2 record prepared promptly and to have a record that is adequate
3 and will be accepted a court.

4 SENATOR PETRIS: That's contrary to the present thinking
5 of the majority of the Board; isn't it?

6 MR. GLADE: It may well be, and it may well be also,
7 Senator, that the present thinking of the Board is somewhat
8 mandated by budgetary constraints that are forced on us by the
9 federal government.

10 SENATOR PETRIS: What can we do about that?

11 MR. GLADE: I'm not familiar yet with just what those
12 constraints are and the extent to which they will permit us
13 funding.

14 SENATOR PETRIS: I have vague notion. I looked into
15 that, and I would hope that our administration here would lean on
16 the feds for some better understanding of the problem, but I'm
17 afraid the administration applauds any budget cuts. They have
18 imposed arbitrary time limits; you can't spend more than certain
19 minutes on each hearing, and it makes a mockery of the fairness
20 and equity for both sides where both sides have been waiting on a
21 terribly long waiting list for a long, long time to get their
22 case heard one way or the other. It's not a one-sided thing at
23 all. One day it may come down on the employer and be to his
24 disadvantage, and the next day would be the employee. So, we're
25 talking about almost in the abstract a fair system that's going
26 to do the job it's supposed to do.

1 MR. GLADE: I certainly agree that is important, and
2 probably the best answer I can give you on that point is this:
3 throughout my entire experience with the Unemployment Insurance
4 Appeals Board, it has always been a balanced Board. It's a very
5 balanced Board today. And I think what I'm saying is that with
6 the balance and the mix that we have on our Board, it provides a
7 safeguard to prevent a runaway type of thing that's prejudicial
8 to a particular individual or a particular case.

9 SENATOR PETRIS: That's fine, but it still leaves the
10 problem of eliminating a very important part of that machinery,
11 and that's the reporter in favor of some kind of electronic
12 process or other.

13 You know, reporting today, if they want to spend money
14 on it, the simultaneous transcript's been demonstrated here in
15 the Judiciary Committee; put it right up on the screen. It comes
16 right out of that machine, and it types up, and wham, there it
17 is. It's right now.

18 So, there's no longer an excuse that, well, you have to
19 wait a long time for the transcript and all that.

20 I would urge you to continue your efforts to try to get
21 away from that policy and lift whatever budgetary constraint
22 there is in order to make certain that both sides get a fair
23 hearing.

24 MR. GLADE: Yes, sir, I appreciate your concern.

25 SENATOR PETRIS: Thank you.

26 CHAIRMAN ROBERTI: Any further questions?

27 Is there any opposition?
28

1 SENATOR PETRIS: Move confirmation.

2 CHAIRMAN ROBERTI: Senator Petris has moved
3 confirmation. Secretary will call the roll.

4 SECRETARY WEBB: Senator Doolittle.

5 SENATOR DOOLITTLE: Aye.

6 SECRETARY WEBB: Senator Mello. Senator Petris.

7 SENATOR PETRIS: Aye.

8 SECRETARY WEBB: Senator Craven. Senator Roberti.

9 CHAIRMAN ROBERTI: Aye.

10 The vote is three to nothing. Confirmation is
11 recommended to the Floor, two absences.

12 Congratulations.

13 MR. GLADE: Thank you very much. I appreciate it.

14 CHAIRMAN ROBERTI: The next appointment is Mr. Michael
15 Callahan, Member of the Industrial Welfare Commission.

16 Mr. Callahan, why don't you tell us why you feel you're
17 qualified to assume this position?

18 MR. CALLAHAN: Mr. Chairman, Members of the Committee,
19 my name is Michael Callahan. I reside at 3454 Bellflower
20 Boulevard, Long Beach, California, ZIP 90808.

21 Practically all of my adult life I have been engaged in
22 one form or another in the restaurant industry, which depends a
23 great deal upon the IWC for interpretation of rules and state law
24 to take care of the working people of California.

25 On many occasions I have appeared before the Commission,
26 worked with them, and took part in their deliberations, so I know
27 of the workings of the Commission.
28

1 When the Governor appointed me some nine months ago, I
2 was very happy to serve as a Commissioner. I've enjoyed my
3 association with the Commission, and I feel if this Committee
4 confirms my appointment, and I'm confirmed by the Senate, that I
5 can make a contribution to the Commission.

6 CHAIRMAN ROBERTI: Thank you, Mr. Callahan. It's been
7 very tough for us to vote for some of the Governor's appointees,
8 but this one may be a little easier.

9 Any other questions?

10 SENATOR PETRIS: One question. I'd like to get your
11 views on enforcement with respect to whether there's adequate
12 staff, especially looking at the underground economy. The
13 Sacramento Bee had a whole series on the sweatshops up here a few
14 months ago, and there are other phases in the underground economy
15 that are just blatantly in violation of the law and violation of
16 the IWC orders.

17 Is there adequate staffing for enforcement? Is the
18 state doing a good job? Is it a hopeless case? What is your
19 perception of it?

20 MR. CALLAHAN: Well, Senator, I think that the state is
21 doing as good a job as they can with the tools they have. They
22 could use more staff, and our Commission works very closely with
23 the Labor Commissioner of the State of California. And, in fact,
24 he's going to be at our meeting on the 19th of this month. And
25 we've cooperated and worked closely with the Labor Commissioner,
26 but again, I state to you and the Committee that they could use
27 more field inspectors to check these jobs and check out the
28 conditions that you speak of in the needle trades.

1 SENATOR PETRIS: Thank you.

2 CHAIRMAN ROBERTI: Any further discussion, debate? Any
3 opposition?

4 Senator Petris moves confirmation be recommended to the
5 Floor.

6 Secretary will call the roll.

7 SECRETARY WEBB: Senator Doolittle.

8 SENATOR DOOLITTLE: Aye.

9 SECRETARY WEBB: Senator Mello. Senator Petris.

10 SENATOR PETRIS: Aye.

11 SECRETARY WEBB: Senator Craven. Senator Roberti.

12 CHAIRMAN ROBERTI: Aye.

13 The vote is three to nothing, confirmation is
14 recommended to the Floor.

15 Congratulations.

16 MR. CALLAHAN: Thank you, Senators.

17 CHAIRMAN ROBERTI: The next appointment is Ms. Darlene
18 Ruiz, Member of the Water Resources Control Board.

19 MS. RUIZ: Good afternoon, Senators.

20 CHAIRMAN ROBERTI: We'll ask you the same question that
21 we ask all the Governor's appointees, and that is why you feel
22 you're qualified to assume this position?

23 MS. RUIZ: Okay, I am an attorney licensed to practice
24 in the State of California, and I'm a graduate of the University
25 of Southern California in Los Angeles.

26 I've been practicing for nearly 10 years, and my
27 practice has been varied, both in the civil division of the
28

1 Attorney General's Office right after law school, then into
2 private practice for two years of general civil practice, and
3 from there to Mobil Oil Regional Counsel in Los Angeles.

4 From there I moved, upon my marriage, to Sacramento and
5 began work with Pacific Legal Foundation in the land use section,
6 which also provided me representation of individual clients in
7 both land use and water rights matters.

8 In the course of the -- I have been serving almost a
9 year on the State Water Resources Control Board as the attorney
10 member. And I would like further to assure this Committee that I
11 have attempted to comply with the entire investigatory
12 proceedings of this Committee in an effort to resolve some
13 questions that came about due to my marital status and the former
14 employment of my husband.

15 I believe that the Committee possesses a report of the
16 Auditor General which indicates that there has been compliance
17 with our separate property agreement.

18 I have with me today a number of groups supporting my
19 confirmation. If it is the pleasure of this Committee, they
20 would like to offer brief statements.

21 I stand ready to respond to any questions you might have
22 and any concerns.

23 CHAIRMAN ROBERTI: Thank you very much, Ms. Ruiz.

24 I would like to have read into the record a report of
25 the Auditor General. To give the background of the report, state
26 law requires that the appointees to these positions, to
27 paraphrase the law, cannot benefit financially from any entity
28

1 which they would be regulating. When counsel, I believe, had
2 indicated there may be some legal question about Ms. Ruiz'
3 standing under that provision, she indicated that she had had a
4 marital agreement with her husband maintaining the properties
5 separately.

6 Since we did not know about that agreement until after
7 counsel had indicated its position, we felt that the proper
8 method of trying to make a determination would be to have the
9 Auditor General make an independent review of the Ruiz' marital
10 agreement, and see if the marital agreement did comply with the
11 provisions of state law.

12 Today I received a copy of the Auditor General's report
13 indicating its conclusions, which is:

14 "We found no specific deposits into
15 or expenses from their four accounts
16 which violated the terms of the marital
17 financial agreement. Both parties
18 made regular deposits into the joint
19 accounts that were used to pay joint
20 expenses. There were also regular
21 payments of household and living ex-
22 penses from these joint accounts.
23 The percentage distribution of deposits
24 to pay joint expenses varied over the
25 last three years."

26 The gist of all this is that the marital agreements do
27 comply with the provisions of this law as far as potential
28

1 conflict of interest. The Auditor General has indicated that
2 he's here to answer any questions of the Members of the
3 Committee, but his report does satisfy me that Ms. Ruiz'
4 appointment does not in any way violate the provision of the
5 statute which we have a duty to enforce in these confirmations.

6 MS. RUIZ: Thank you, Senator.

7 CHAIRMAN ROBERTI: Before we ask for any supporters,
8 we'll have them come to indicate their support, but does the
9 Committee have any questions?

10 SENATOR MELLO: Mr. Chairman.

11 CHAIRMAN ROBERTI: Senator Mello.

12 SENATOR MELLO: In going over the Auditor General's
13 report, you've got it marked "Confidential", I guess, which means
14 it should not be released for the public. But he really doesn't go
15 into -- well, I guess his findings are adequate in saying that
16 there are no specific deposits or expenses that violated the
17 terms.

18 It seems to me that you and your husband, when you just
19 remarried May the 19th of last year, I believe it was --

20 MS. RUIZ: Well, our marriage date is May 29th, 1982.

21 SENATOR MELLO: Right. But then upon finding that you
22 were going to be considered for an appointment, I'm trying to
23 find the dates here now, you left Mobil Oil Company in April of
24 1982, but your husband continued to be employed until January
25 13th, 1984.

26 MS. RUIZ: That's correct.
27
28

1 SENATOR MELLO: Now, you were appointed to the Water
2 Resource Control Board on April 3rd, 1984, but three days before
3 that your husband disposed of the Mobil Oil stock that he had,
4 that he owned, on March 30th, 1984.

5 MS. RUIZ: That's not quite accurate. The stocks that
6 he was disposing of, he gave direction, I believe, sometime in
7 January was my recollection. But it would have been sometime
8 before the appointment. He had to make a decision about how he
9 was going to liquidate his employee benefits plan, and included
10 in that was his employee savings plan and employee retirement
11 plan. So, he gave the instructions to sell and to liquidate
12 those.

13 SENATOR MELLO: In other words, after your appointment
14 was the disposal of the stock, even though the decision to
15 dispose of it was made sometime after the resignation; is that
16 correct?

17 MS. RUIZ: Right, it was made subsequent to his
18 termination from Mobil.

19 SENATOR MELLO: Then your appointment was effective on
20 April 19th, 1984. I was looking for the other sheet that said
21 that they made this nuptial agreement.

22 Then you made this nuptial agreement even after?

23 MS. RUIZ: That's correct, Senator. The written
24 agreement was a memorialization under penalty of perjury of an
25 ongoing oral executed agreement which my husband and I had
26 entered into prior to the marriage, which is perfectly
27 permissible under California law.
28

1 SENATOR MELLO: I thought it was an undated document.

2 MS. RUIZ: I believe it was executed, though, and
3 notarized sometime in April.

4 SENATOR MELLO: Yes, it was May 1st when it was
5 notarized, but it would seem to me strange that a document of
6 that importance was not dated when it was signed.

7 MS. RUIZ: Because it was signed that same day.

8 SENATOR MELLO: So in other words, the notary's
9 designation provided the basis for the date on which it was
10 signed?

11 MS. RUIZ: That's correct.

12 SENATOR MELLO: The reason I'm asking these questions is
13 because I think that, and it's hard to figure out because I'm not
14 an attorney, but trying to understand this. You and your husband
15 are married; you have community property under the law of
16 California, but yet you entered into an agreement that sort of
17 keeps your own independent resources separate and whole.

18 Now the point I'm getting at is, if Mobil Oil comes in
19 for a permit before your Board, how will you handle that?

20 MS. RUIZ: Understandably, Senator, the provision that
21 is in question here is the qualification statute. A decision on
22 Mobil Oil matters would be a conflict of interest provision
23 governed under the Government Code. Such a conflict of interest
24 provision would require me, if indeed we had within the year
25 before of the decision my spouse or dependants had an interest, a
26 financial interest, in Mobil Oil, to disclose that and to get a
27 legal opinion or to excuse myself from any decision governing
28 Mobil Oil.

1 To that end, there has come a circumstance in the last
2 year on which I voted on the underground tank regulations,
3 Subchapter 16, which would have had a financial impact on Mobil
4 Oil. I sought an opinion of the Fair Political Practices
5 Commission because I was sensitive to the conflict of interest
6 concerns. I gave them the full set of facts, including the sale
7 of my husband's stock from his employee benefits, and they
8 reviewed them closely and issued an opinion, a published opinion,
9 indicating that there was no conflict, that all interests had
10 terminated prior to my acceptance of my appointment.

11 SENATOR MELLO: Then the question to follow that up,
12 what would be the way you would conduct yourself, say, right now
13 if Mobil Oil came in with a permit today?

14 MS. RUIZ: If I have no interest in Mobil Oil, and my
15 family has no interest in Mobil Oil at this time, I would
16 continue within the time frame set forth in the conflict of
17 interest provisions to request further opinions, but if there's
18 any question or any doubt that would lead to even a perception of
19 conflict of interest, I would certainly excuse myself from that
20 decision pursuant to the law.

21 SENATOR MELLO: When do you expect this time to expire?
22 I guess the final date would be the final sale of your husband's
23 stock.

24 MS. RUIZ: The operative date now would have been the
25 date he ordered the sale of the stock, and it's one year from
26 that date that all interest at all in terms of my even having to
27 seek an opinion, as I understand the law, would then cease.
28

1 SENATOR MELLO: So would that date be one year from
2 March 30th?

3 MS. RUIZ: If that is indeed the date. I recalled it a
4 couple of months earlier, but yes, that would be the date.

5 SENATOR MELLO: March 30th has already elapsed, so you
6 feel you're no longer under a legal conflict of interest if Mobil
7 Oil came in for a permit at this point?

8 MS. RUIZ: That's right, because neither myself nor my
9 spouse nor my dependants have any beneficial interest in anything
10 dealing with Mobil Oil Corporation.

11 SENATOR MELLO: Now, I'd like to ask you a few questions
12 about one of my favorite concerns, and something that you play a
13 very important role in, and that's Kesterson.

14 MS. RUIZ: Ah, yes.

15 SENATOR MELLO: There's been a lot of plans over the
16 years from what I think has been a real boondoggle from the
17 Bureau of Reclamation. About 18 years ago, they had a plan to
18 pump this waste over the Pacheco Pass into Monterey Bay, and we
19 tried to stop them then, and they said they had no plan, and then
20 they came back later and they held a hearing this last January in
21 Monterey and said: We're just having an information hearing; we
22 have no plan. And then they came to Sacramento and they said:
23 Well, Monterey Bay is one of the alternatives, plus San Francisco
24 Bay, and Contra Costa is the other.

25 How do you feel about disposing of the problem of
26 Kesterson? Should it be pumped out of that area to some other
27 point?
28

1 MS. RUIZ: Well, I for one do not feel I am technically
2 qualified to be able to resolve the Kesterson problem. As a
3 member of the Board, we did review the evidence before us. We
4 did consider and weigh the statutes which had to be complied
5 with, and we did issue that clean up and abatement order, for
6 which there was much controversy.

7 I do not know what the ultimate solution should be. I
8 do know that the waters of the State of California, whether they
9 are the surface waters or the ground waters, will not be
10 jeopardized by this Board in any way in an effort to clean up
11 Kesterson. So, any solution to it will have to not include any
12 harm or potential risk to the existing water quality of the
13 state.

14 SENATOR MELLO: Why did you then hold up the draft that
15 the Board was about to circulate? There was a clean up and
16 abatement order issued to the Bureau of Reclamation, and the
17 staff had prepared a draft to circulate at that point. And I
18 understand you objected to the draft, and therefore, not having
19 adequate time, the hearing that they held was only an information
20 hearing, and they could not really hear testimony at a public
21 hearing because the draft that you were unhappy with was not
22 available for the hearing.

23 MS. RUIZ: As the attorney member of the Board, I was
24 permitted to see the draft some four days prior to the hearing
25 scheduled on it. And prior to the time I had been given a copy
26 of that decision, proposed decision, the Board had been led to
27 believe that the only thing that would take place at the hearing
28

1 date was going to be a decision to take over the case. Somewhat
2 unprecedented for most circumstances, in that normally this would
3 have been taken care of by the regional board, and since this was
4 a petition to the State Board, we had decided to take over not
5 only the Kesterson issue directly, but also a few other of the
6 irrigation districts involved.

7 My concern after reading through the draft was that it
8 was not legally supportable. There was not enough evidence on
9 the record to substantiate it, and there were certainly not
10 sufficient references to the documentation or facts, that there
11 were conclusions made in that opinion that were inadequate.

12 I felt that such an order, had it been rendered at the
13 subsequent hearing four days after, would not have withstood
14 judicial scrutiny, and I saw no purpose for us to go through such
15 an exercise. I therefore advised the other Board members of
16 these concerns and felt that we needed to have a strong record in
17 this case, and to have a very clear and direct decision in order
18 to make sure that the clean up and abatement order would go forth
19 and solve the problem as we hoped.

20 SENATOR MELLO: Even though the Bureau of Reclamation
21 came in about a month or two later with a more drastic action,
22 and they just put a complete cease and desist order on Kesterson,
23 and that was far stronger than what I understand the original
24 draft to be.

25 MS. RUIZ: Their decision to shut down Kesterson, as it
26 was first announced to the press, we had no word of; we had no
27 knowledge of. That they were going to take that action,
28

1 certainly the Board would have looked at it in terms of trying to
2 guide and govern the closure of Kesterson, as we are now. I
3 understand that they are going to try and meet the time frame
4 within the two to three year period, and that we are going to
5 continue to monitor their methods for cleaning up Kesterson now
6 that they've made that decision for closure.

7 As for whether that was a more stringent act, that was a
8 decision that was always available to them throughout the
9 proceedings, to go ahead and order its closure.

10 SENATOR MELLO: Then the other draft that finally the
11 Board did consider and adopt appeared to me to be much more
12 lenient and gave the Bureau three years to enact -- I believe it
13 was six months for a study and then three years to come up with a
14 solution to Kesterson. That was done even before the Bureau came
15 in and shut it down.

16 What I'm looking at, I think the federal government
17 became a better protector of toxic waste and poison than our own
18 State Water Resource Control Board, because your Board was going
19 along in a step-by-step process, allowing the Kesterson
20 contamination to continue.

21 MS. RUIZ: Well, understand, Senator, that what our
22 concern is, is that even if Kesterson were to be ordered closed
23 today, it could not physically take place today. It will take a
24 period of almost two years to three years to be able to
25 physically get moving in that direction to close it and not
26 further pollute the waters of the state.

1 We understand that; the Bureau understands that, and
2 that is the direction it's now going in.

3 As for whether the final order was more flexible in
4 terms of time, I believe the sequence of events was that in early
5 January, at the time the hearing was continued, I sought a
6 continuance of one day. The Board chose, decided on a
7 continuance of an even greater period of time, and it was after I
8 had left that meeting, when they were continuing to take
9 testimony, that the remaining Board members decided to enlarge
10 those periods for six months and then an additional three years
11 for the closure process.

12 SENATOR MELLO: What do you think is the solution now to
13 Kesterson?

14 MS. RUIZ: I believe that the only solution -- I don't
15 know that there is a solution right now. I do know that there is
16 a need to coordinate and have all agencies involved and all
17 interested parties moving together to try and find some kind of
18 innovative way to cope with this clean up and perhaps to take the
19 bigger issue at hand, deal with agricultural discharges.

20 SENATOR MELLO: What do we do in the short term?

21 MS. RUIZ: Well, in the short term, the Board is
22 continuing to monitor and seek compliance with the Bureau in
23 terms of the clean up order.

24 SENATOR MELLO: We get a little nervous when we hear the
25 word "monitor". That means look at.

26 We're looking for a solution there somehow, and I don't
27 want to accept this as the state's responsibility. It's a
28 federal responsibility, and I plan to hold them to it.

1 But we're in an important position to make them come up
2 with these solutions, which I think, you know, everyone's trying
3 to pass the buck.

4 MS. RUIZ: This isn't just a monitoring, Senator. This
5 also includes that the Board has already appointed a technical
6 task force, both regional and state technical staff, and they are
7 currently establishing the waste discharge standards for this
8 entire area.

9 SENATOR MELLO: Well, we'll be working and watching how
10 the Kesterson thing progresses, because to me it's one of the
11 most serious problems we have in the State of California.

12 MS. RUIZ: I would concur.

13 SENATOR MELLO: I wanted to ask you further about
14 another concern, and that is the reduction of federal funding for
15 our waste water treatment facilities from 75 to 55 percent, and
16 even an appearance that that might even be lowered further.

17 How are we going to handle our waste water treatment in
18 the State of California with such a large gap to be made up by
19 the local entities?

20 MS. RUIZ: That's going to pose the ultimate challenge
21 for the State of California. I am hopeful, though, that the
22 federal government will not take such drastic action. The clean
23 water program is fundamental to especially a state such as
24 California, which is growing, in order to meet the waste water
25 treatment needs of the state and its population.

26 SENATOR MELLO: We passed a bond issue last year that
27 provides for loans, but that money has to be paid back.
28

1 How do we put local communities in a position of getting
2 adequate funding, both federal and mostly some additional state
3 and local, in order to provide facilities for cleaning up our
4 waste water?

5 MS. RUIZ: Well, we are finding as a result of that
6 bond measure, by the way, the local governments are becoming
7 quite innovative in how they are dealing with meeting their
8 financial needs to make application and complete these projects.

9 We have every intention as a Board, and the Board is
10 making moves in this area, to encourage that kind of innovation,
11 and looking at private enterprise approach to it, perhaps, is
12 also encouraging.

13 We have not, by the way, given up on the federal
14 government's continued funding of waste treatment plants all
15 together.

16 SENATOR MELLO: What's your feeling about agricultural
17 discharges into state waters?

18 An area like Elkhorn Slough in my area, if you're
19 familiar with it and I'm sure you are, there's a lot of dairies
20 around the slough, and they're discharging certain toxic
21 materials into the estuary.

22 MS. RUIZ: The regional boards have in fact and are
23 establishing even more rigid standards governing those kinds of
24 discharges, discharges of the dairy industry. And we have every
25 reason to believe, given the reports that we get back from the
26 regional boards, that they are indeed placing more stringent
27 requirements on them to meet water quality standards.
28

1 SENATOR MELLO: Has the State Board given them some
2 direction or guidelines as far that, or is that all in state law?

3 MS. RUIZ: Well, the regional boards are the ones that
4 are required to establish the standards for those waste discharge
5 requirements, both through their basin plans as well as through
6 their waste basin plan amendments.

7 SENATOR MELLO: Thank you.

8 CHAIRMAN ROBERTI: Senator Petris.

9 SENATOR PETRIS: Unfortunately I had to go upstairs to
10 another committee. Now I'm at a disadvantage because I don't
11 know what's been asked and answered. I'll try a few, and if
12 they've been asked --

13 SENATOR MELLO: I asked her a little bit about the
14 conflict of interest and the chronology of her and her husband's
15 holdings, but you may want to explore that further.

16 SENATOR PETRIS: Maybe I can go into some of the
17 policies.

18 One of the questions is on this Kesterson problem. I
19 got the tail end of that; you probably went into it a little bit.

20 I'd like to know what your objections were to the
21 proposed draft that the staff offered in committee on the
22 Kesterson problem. They came up with a modified one.

23 My impression is that the staff proposal was more strict
24 than yours. Can you tell me something about that?

25 MS. RUIZ: Well, that's not quite accurate.

26 My concerns over the initial draft that was provided in
27 December were that in fact we had but one hearing, and we were
28

1 led to believe that that hearing was being held for the purposes
2 of determining the scope of how much the State Board was going to
3 take direct jurisdiction over, and that we would assume the full
4 Kesterson issue.

5 Therefore, the full record was not available to
6 establish some of the conclusions of nuisance, of the current
7 metal levels, or --

8 SENATOR PETRIS: Did you have more hearings after that?

9 MS. RUIZ: Yes, we did. As a result of that --

10 SENATOR PETRIS: How did those hearings affect the
11 language?

12 MS. RUIZ: They affected the language insofar as the
13 final decision then was not only clearer, but in its conclusions,
14 it actually cited through an entire table of appendix that were
15 portions of the record substantiating our clean up and abatement
16 order.

17 SENATOR PETRIS: I have some other areas of interest.

18 The Governor's reorganization plan. As I understand it,
19 on the toxicity, it separates water rights from water quality,
20 among other things.

21 What is your view on the reorganization plan? Do you
22 think it's a step in the right direction?

23 MS. RUIZ: Well, Senator --

24 SENATOR PETRIS: Do you have any reservations?

25 MS. RUIZ: I'm not clear that that is, in fact, what the
26 ultimate plan does. As I understand it, and I have not had an
27 opportunity in the last week or so to review the specific
28

1 language that was sent over to the Little Hoover Commission, it
2 in fact does leave the Board with water quality jurisdiction and
3 authority.

4 I see that the Governor has identified a very serious
5 need. My concern as well as the full Board's concern is to make
6 sure that those who must make the decisions, and fortunately that
7 is not us, have all the facts they need as to how we operate and
8 what our statutory authorities are.

9 SENATOR PETRIS: In creating a new agency to try to
10 consolidate, the Governor's statement to the press was that there
11 are large numbers of various agencies, state and local and
12 especially state, having jurisdiction in some way or other on the
13 toxic issue. And he wanted to go toward consolidation to make it
14 more efficient.

15 Every time you consolidate into one agency, you take
16 jurisdiction away from others. You know, the subject matter is
17 flying around out there somewhere, and you pull it in.

18 To what extent, so far as you know, and maybe you're not
19 aware of it yet, but to what extent does it take jurisdiction
20 away from the Water Quality Control Board?

21 MS. RUIZ: To my knowledge at this time, as I say, I
22 haven't been able to study the final proposal, it does not affect
23 our water control authorities.

24 SENATOR PETRIS: Not at all?

25 MS. RUIZ: Not at all.

26 SENATOR PETRIS: So, I guess at the present time, since
27 you haven't seen the final version that went to the Commission,
28 you have no opinion on it?

1 MS. RUIZ: No, I don't.

2 SENATOR PETRIS: Will your Board be asked to comment on
3 it?

4 MS. RUIZ: I'm sure, and I believe the Board's position
5 is that we stand ready to provide all the information necessary
6 for the necessary people to make the right decisions.

7 SENATOR PETRIS: Well, they probably want policy input,
8 too, as much as information, as to what you think should be done.

9 On the basis of your experience up to now, what changes
10 would you recommend on the problem of toxicity, you know, toxic
11 stuff in the waters, that might improve our policy?

12 MS. RUIZ: Well, technically I don't feel I'm really
13 qualified to be able to propose any real solutions in that area.
14 What I feel is important to inform you of is the Board's current
15 effort of trying to look at this as a whole program, a whole
16 issue, particularly as it deals with underground water basins.

17 The Board is now moving ahead, very aggressively, in
18 trying to establish a state white paper on underground water
19 protection, and within that, we must, by its very definition,
20 include underground leaking tanks, underground injection, and the
21 like.

22 We are hopeful that a coordinated effort between other
23 state agencies is going to develop such a white paper within the
24 next year, from which we're hopeful that the Legislature will be
25 able to provide any additional authorities necessary in order to
26 protect the ground waters of the state.

27
28

1 SENATOR PETRIS: Isn't that going to overlap the new
2 agency on toxicity by the very nature of the work?

3 MS. RUIZ: That has that potential. I don't know
4 specifically. But right now --

5 SENATOR PETRIS: I'm not saying it's bad; it just seems
6 to me it's inevitable.

7 MS. RUIZ: It may, indeed, but at this time the Board is
8 operating -- going ahead with this so that there isn't any lag by
9 virtue of reorganization.

10 SENATOR PETRIS: Under the Federal Clean Water Act,
11 there are certain traditional, over the years, grants from the
12 federal government to the state and local people to carry out
13 this work. Those have been severely curtailed, and President
14 Reagan has said they ought to be eliminated because we've solved
15 the problem.

16 Do you agree with that statement?

17 MS. RUIZ: In my experience over the last year, I would
18 have to say that there is -- there continues to be a need for the
19 program. And I would hope that the federal government will
20 continue to address that need by way of the Clean Water Program.

21 SENATOR PETRIS: Is that the Governor's hope?

22 MS. RUIZ: I don't know.

23 SENATOR PETRIS: Will you use your influence with the
24 Governor to see to it that the feds maybe change their mind on
25 that? I think the President's statement was a budget statement
26 rather than based on knowledge of what's happened, because he
27 said: We have solved the problem. Well, those weren't his exact
28 words. The exact words were:

1 "The major water quality problems
2 have been solved, and state and
3 local government should pay for
4 whatever else needs to be done."

5 That gets him off the hook on the budget.

6 Do you feel there's still a continuing need for those
7 grants? It used to be 75 percent federal and 25 percent --

8 MS. RUIZ: Right, and that has been reduced as of the
9 last fiscal year.

10 SENATOR PETRIS: Now it's down to 55?

11 MS. RUIZ: Right.

12 SENATOR PETRIS: Can we operate on that 55? Can we get
13 along an accomplish the mission of the Water Quality Control
14 Board and the other agencies as you see that mission?

15 MS. RUIZ: Well, we have every indication that, in fact,
16 such a reduced program can work. What is my concern is that the
17 total elimination of the program will make it very difficult in
18 the State of California, given its needs.

19 SENATOR PETRIS: What impact has that reduction had on
20 our efforts in our state?

21 MS. RUIZ: That would be difficult to gauge right now.
22 I couldn't begin to assess it.

23 I do know, though, given the population growth, and the
24 need for waste water protections and waste water treatment, that
25 it could have a serious impact on the State of California.

26 SENATOR PETRIS: Is there a geographical distribution of
27 that impact? Is it hitting certain places harder than others?
28

1 MS. RUIZ: As I understand it, and one of the reasons
2 that the bond law that was passed last year is attempting to
3 address it, smaller communities are being hit. They've outgrown
4 their current systems and are in need of expanding those systems.
5 And we're finding that that's true throughout the state.

6 SENATOR PETRIS: In view of the cutback in federal
7 funds, how do we finance those now?

8 MS. RUIZ: Well, right now the bond is assisting local
9 governments, and because it does have an arrangement whereby
10 local governments can now come in and apply for those monies, we
11 are making every effort through TRITAC and other agencies to
12 advise them on how to apply and become qualified for that bonding
13 money.

14 SENATOR PETRIS: Is that equal to the cuts? Is there
15 enough money there to replace the cuts?

16 MS. RUIZ: That I don't know. I have not done that kind
17 of assessment to whether or not that will meet the full needs.

18 SENATOR PETRIS: Bonding is an obligation that the local
19 agency has to undertake, whereas the monies we're talking about
20 were grants.

21 MS. RUIZ: That's right.

22 SENATOR PETRIS: Federal grants.

23 SENATOR MELLO: It's a loan now.

24 SENATOR PETRIS: Yes, it's an obligation. The agency
25 has to pay it back and fight with the bonding market and all that
26 stuff.
27
28

1 Do you think that's an adequate replacement? Do you
2 think it's suitable?

3 MS. RUIZ: I believe that there is still a need, and
4 whether it can be addressed by -- I don't know whether the state
5 will be able to address that need alone. And I am hopeful that
6 the federal government will rise to the front and assist the
7 state in being able to meet those needs.

8 SENATOR PETRIS: Is that hope being translated into
9 action by anybody on the Board, either in concert with the
10 Governor to urge him to do it or directly with the President, or
11 the appropriate federal agency, if not the President himself?

12 MS. RUIZ: We have provided information to Washington as
13 to the needs as we've identified them here in California. That
14 is being handled, I understand, by the Governor's lobbying office
15 in Washington, D.C.

16 SENATOR PETRIS: So far as you know are they pushing for
17 resumption of the grants, or at least a restoration of some of
18 the cuts?

19 MS. RUIZ: I do not know, Senator.

20 SENATOR PETRIS: The problem came up with regards to the
21 conflict to do with the fact that your husband's former employer
22 had a lot of applications on file and was affected by, or worked
23 directly under the Board because of the work it does in the
24 state.

25 I understand he's no longer employed by the oil company?

26 MS. RUIZ: That's right.
27
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1 SENATOR PETRIS: Is he with a different oil company now,
2 or is he out of that business all together?

3 MS. RUIZ: No, he's not. He is self-employed.

4 SENATOR PETRIS: Are you being appointed as a public
5 member?

6 MS. RUIZ: No, I am the attorney member of the Board.

7 SENATOR PETRIS: The law requires that one member of the
8 Board be an attorney?

9 MS. RUIZ: That's correct.

10 SENATOR PETRIS: In the beginning, before I left, you
11 indicated some background in the Attorney General's Office and
12 some private practice.

13 Were you also staff attorney or on the board of the
14 Pacific Legal Foundation?

15 MS. RUIZ: No, I was the staff attorney.

16 SENATOR PETRIS: What kind of litigation, if any?

17 MS. RUIZ: It was land use attorney; I was a land use
18 attorney.

19 SENATOR PETRIS: What is that? What did that involve?

20 MS. RUIZ: I represented individual clients on various
21 land use matters, ranging from counseling certain clients as to
22 their rights before planning agencies, local public entities.

23 SENATOR PETRIS: Is that mostly local agencies?

24 MS. RUIZ: To some extent, as well as the state's
25 involvement in Coastal Commission matters and the like.

26 SENATOR PETRIS: What does that involve? Clarification
27 of fuzziness in the law, or challenge to a particular policy
28 decision of a planning commission?

1 MS. RUIZ: Well, for instance, if an individual felt
2 that they were not being permitted to utilize their property for
3 anything, and it had been in fact placed within a green belt, and
4 that there was no compensation forthcoming, then an individual
5 would come to the Foundation and that representation would be
6 undertaken.

7 SENATOR PETRIS: What do you think is the most important
8 mission of the Board? I mean, I'm sure each member has a
9 priority, you might say. What do you regard as the Board's most
10 important function? Say the top two or three priorities.

11 MS. RUIZ: I would say that primarily, as the attorney
12 member, I see the Board's function is to execute the law, to take
13 a more proactive stance in assuring that the laws as they have
14 been passed are in fact exercised and executed.

15 That certainly is going to become very, very critical in
16 the area of toxics, both for ground waters as well as surface
17 waters. And I believe the Board has taken over the last year a
18 very aggressive standing with the adoption of Subchapter 16,
19 dealing with underground tanks, and the Subchapter 15, dealing
20 with --

21 SENATOR PETRIS: What kind of tanks?

22 MS. RUIZ: Underground tanks, mostly gasoline tanks and
23 the like.

24 SENATOR PETRIS: I'm dealing with one of those right
25 now. It's a good law.

26 What are the primary enforcement tools? You say the
27 most important thing is the execution of the law. What are the
28 tools that have enough teeth in them to compel compliance?

1 MS. RUIZ: The Board has a great deal of authority, both
2 through the clean up and abatement orders as well as the
3 McCorquodale bill which was passed last year that allows
4 penalties to actually be assessed against those who are in
5 noncompliance.

6 SENATOR PETRIS: What's the range of the penalties?

7 MS. RUIZ: My recollection is that it can go as high as
8 \$25,000 a day.

9 SENATOR PETRIS: What's the highest the Board has
10 imposed so far?

11 MS. RUIZ: So far the State Board has not. That is
12 being also given to the regional boards, and they are more
13 directly involved in terms of the issuance of clean up and
14 abatement orders and cease and desist orders, as well as
15 referrals to the Attorney General's Office.

16 SENATOR PETRIS: So, how does the state do the
17 enforcing? Do they monitor the regions?

18 MS. RUIZ: That is supposed to be our role, to
19 coordinate and monitor for consistency the regional boards'
20 activities in this area.

21 SENATOR PETRIS: Do you think the regional boards are
22 vigorous in their enforcement?

23 MS. RUIZ: Candidly, it would vary from region to
24 region.

25 The Board also serves, by the way -- I neglected to
26 mention the appellate role. Of course, when someone, whether it
27 happens to be a person unhappy with a decision on a waste
28

1 discharge, or it happens to be the discharger directly, they then
2 have the right to appeal to the State Board.

3 SENATOR PETRIS: What has been the pattern of those
4 appeals? Is it someone being penalized too heavily and they come
5 to you for relief, or is it the other way around?

6 MS. RUIZ: No, I would say that there seems to be an
7 even split. The questions that have come have come from both
8 dischargers as well as those that, perhaps, believe the
9 environment has not been adequately protected or the water
10 quality has not been adequately protected. I'd say they're
11 running pretty close.

12 In the cases we've seen to date, a large number of them
13 come to us and there are not adequate grounds to hear anything
14 further on them, and we simply sustain the regional board.

15 SENATOR PETRIS: Does the Board have a policy of
16 outreach, reaching out to community groups who are concerned
17 about the problems and discussing problems with them on policy
18 matters?

19 MS. RUIZ: I believe the Board has a very fine record,
20 from what I've observed over the last year, of including the
21 public into its process and attempting to de-mystify both in the
22 water rights laws as well as the water quality area how we
23 operate and what their role is, whether it's protestants or as
24 observers to see that we are doing our job. But I think it's an
25 area that we need to continue to emphasize and enhance.

26 SENATOR PETRIS: Do you make those groups feel welcome?
27 Some agencies don't, you know. Some agencies shoo them away.
28

1 MS. RUIZ: The Board, as far as I've observed, is always
2 very grateful for their input and feels that our decision making
3 is improved by virtue of their participation.

4 SENATOR PETRIS: Which groups have had input?

5 MS. RUIZ: Such organizations as the Friends of the
6 River, the Sierra Club appears before us frequently, individuals
7 who have even come before us, farmers, fishermen and the like
8 have appeared frequently.

9 SENATOR PETRIS: Does the Board circulate notices widely
10 on proposed regulations?

11 MS. RUIZ: That's what we attempt to do, and I think one
12 of the things I'm very sensitive to is the notice, so that we
13 have the broadest participation possible. And the best way to do
14 that is, we believe, making sure that people are maintained on
15 interested party lists and mailing lists as well as providing
16 public notice.

17 SENATOR PETRIS: Do you think the regulations are
18 necessary?

19 MS. RUIZ: Which regulations?

20 SENATOR PETRIS: Any regulations promulgated by your
21 Board?

22 MS. RUIZ: I believe they are necessary. For instance,
23 Subchapter 16 and Subchapter 15, they are some of the most
24 stringent in dealing with water quality.

25 SENATOR PETRIS: Some people think those are
26 antibusiness.

27 MS. RUIZ: That's probably very true.
28

1 SENATOR PETRIS: The fellow who appointed you thinks
2 they're antibusiness. He recently criticized the Supreme Court
3 for upholding those regulations; called it an antibusiness
4 decision, more than one decision.

5 That's not your view, looking at particular regulations,
6 is it?

7 MS. RUIZ: No, my view is that as a branch of the
8 executive government, our job is to execute, and where the
9 statute indicates that we are to adopt regulations, we are to
10 attempt to comply.

11 SENATOR PETRIS: I've been trying to find some of these
12 onerous regulations because I've heard so much coming out of the
13 Governor's Office regarding that, and I don't intend to pull you
14 into that, but I thought it should be mentioned.

15 Every appointee who has come before us has answered the
16 question exactly the same way you have, and I've asked a lot of
17 them, not all of them. They believe in the law; they feel the
18 law should be enforced; and in order to properly execute it and
19 administer it, there's got to be regulations.

20 And yet the appointment authority makes many speeches
21 throughout the state severely throwing rocks at regulations, as
22 if the regulations are the enemy that are going to strangle all
23 of us.

24 Now, I guess some regulations have outlived their
25 usefulness, but we're talking about fields where current problems
26 are confronting us and haven't been solved yet, and we're looking
27 to people like you to solve them through proper enforcement and
28 proper regulations, fair and reasonable, and good monitoring.

1 You don't have any quarrel with that, do you?

2 MS. RUIZ: Well, I certainly -- and I don't even believe
3 the Governor would have a quarrel with the fact that clear,
4 plain, thorough regulations, called for by statute, are
5 necessary.

6 SENATOR PETRIS: I wish he's say that once in a while.
7 I haven't heard him say that.

8 I know you're not carrying his brief for him, but
9 nevertheless -- okay.

10 Thank you.

11 CHAIRMAN ROBERTI: If the State Health Department or the
12 State Food and Agriculture Department issued a finding that the
13 toxic levels at Kesterson were hazardous to public health as far
14 as the contamination levels in, say, a given crop, lettuce or
15 whatever that are grown nearby, what recommendations would you
16 believe would be proper for the Board to issue?

17 MS. RUIZ: Well, I believe that what we have done by way
18 of the Kesterson order is to look to having that cleaned up, and
19 for them to either double line or do what is necessary within the
20 time frame.

21 CHAIRMAN ROBERTI: Yes, I understand that. You have a
22 time frame based on the data that you have right now.

23 What I'm saying is, what would you do if between now and
24 September, when the harvests, or October -- I don't have the
25 exact time -- when the harvest time occurred, either a federal
26 health agency or a state health agency, or the state agriculture
27 department issued a finding that the toxic levels actually
28

1 endangered public health. Which I think may be short of what the
2 actual finding is at this point.

3 MS. RUIZ: I think it's important to note, Senator, that
4 this isn't a result of pesticides or agricultural use of
5 chemicals. This in fact is coming from the selenium which is
6 naturally occurring within that area.

7 CHAIRMAN ROBERTI: I understand.

8 MS. RUIZ: I would find it very difficult to understand
9 anticipating such a problem.

10 I still maintain that if there is a public health
11 problem, and it deals with a water quality issue, that we would
12 take the evidence necessary to establish that, accept the
13 determinations of the sister agencies, and then take an approach
14 we hope, substantiated by the record, in seeing to it that it was
15 cleaned up.

16 CHAIRMAN ROBERTI: Could you envision any circumstance
17 in which you would issue an immediate clean up or no further
18 irrigation water would be supplied? Is there any point, not just
19 Kesterson; let's just talk in generalities. I want to know what
20 your public policy posture is.

21 Say that Food and Ag issues a finding, or the Health
22 Department issues a finding that the continued production of a
23 given crop in a given area endangered public health, or was of a
24 toxic level that was endangering or could endanger the public
25 health, and they issue a finding to this effect.

26 Would you under those circumstances support the
27 supplying of water for the continued production of that crop?
28 Would you favor a phase out? What would you do?

1 I know these are hypothetical situations, but there are
2 very important current policy decisions that are being discussed.

3 MS. RUIZ: It does make it very difficult, because as I
4 understand it, the sister agency making such a determination
5 would also have certain powers and authorities to order immediate
6 clean ups.

7 CHAIRMAN ROBERTI: I understand that. I guess I want to
8 know two things: One, what your policy position would be; and
9 what it would be within the purview of what authority you have?

10 MS. RUIZ: Well, as a policy matter, I would do that and
11 encourage that which is required under law. That if, in fact, it
12 did reach those standards that jeopardized the water quality, I
13 would then take the remedy available to us in order to assure
14 that there was no further risk to water quality.

15 CHAIRMAN ROBERTI: What are the various remedies that
16 are available to you in that kind of situation?

17 MS. RUIZ: Well again, because it's a very broad
18 hypothetical, we're looking at the Board's general powers to
19 issue clean up and abatement orders, cease and desist orders for
20 which noncompliance is then referred to the Attorney General's
21 Office.

22 CHAIRMAN ROBERTI: So you would not be adverse, given
23 the proper set of circumstances, to support a cease and desist
24 order if you thought the contamination to public health had
25 reached a certain level?

26 MS. RUIZ: That's correct.

27 CHAIRMAN ROBERTI: Any other questions?
28

1 SENATOR PETRIS: One I forgot.

2 Did your work with the Pacific Legal Foundation, in
3 addition to land use, did you do any work on environmental
4 issues?

5 MS. RUIZ: No, that was handled by a different section
6 of the Foundation.

7 SENATOR PETRIS: Thank you.

8 CHAIRMAN ROBERTI: Is there any opposition?

9 Please don't come forward. I said I'd have the support
10 first. I just wanted to know if there was any.

11 Any supporters please indicate. Come on forward and
12 sort of line up, then indicate who you are.

13 MR. HAYS: Good afternoon. My name is Brad Hays from
14 the California Manufacturers Association.

15 Over the last couple of years, I've been involved in
16 hearings, both public workshops and public hearings, with the
17 Water Board. And I've consistently found that Assembly Member
18 Ruiz -- excuse me, Darlene Ruiz to be informed, articulate, and
19 very objective. Quite frankly, that's the kind of person that I
20 believe not only the California Manufacturers Association but the
21 public would like to have serve on this Board.

22 We strongly urge your confirmation. Thank you.

23 CHAIRMAN ROBERTI: Thank you.

24 MR. DU BOIS: Mr. Chairman, I'm Bill Du Bois with the
25 California Farm Bureau Federation.

26 Although our relationship with Ms. Ruiz has been rather
27 brief, less than the last year, we have worked with her on a
28

1 couple of important cases. We feel that she was very objective
2 in her treatment of those cases, although neither of them went to
3 my liking. I think that she was accurate in her determination.

4 We support her confirmation to the Board.

5 CHAIRMAN ROBERTI: Thank you very much. Next.

6 MR. ANDERSON: Mr. Chairman, Senators, I'm Matt
7 Anderson, California Forest Protective Association representing
8 the forest products industry.

9 We concur in the observations of the other supporters
10 before me of Ms. Ruiz' confirmation. We have found that in our
11 dealings and contacts with the State Water Resources Control
12 Board during the past year that in our opinion, her only interest
13 is the public interest.

14 Thank you.

15 CHAIRMAN ROBERTI: Thank you very much.

16 MR. GARCIA: Mr. Chairman, Senators, my name is Jesse
17 Garcia. I'm the National Vice-President for the Mexican-American
18 Correctional Association.

19 Our organization is strongly supporting Ms. Ruiz for
20 appointment to the Board of Water Resources. Ms. Ruiz first came
21 to our attention when she attended one of our national board
22 meetings, explained to us the situation in which she found
23 herself in as this conflict of interest issue was unraveling.
24 And after listening to her investigating the facts, observing
25 that she has been doing an excellent job in her present position,
26 for those reasons -- and we've found that you've reported today
27 that there's no conflict of interest according to the Auditor
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1 General's report. For those reasons, we support Ms. Ruiz for
2 this position.

3 CHAIRMAN ROBERTI: Thank you very much.

4 MR. RUIZ: Senator, fellow Senators, I'm Bob Ruiz, and
5 I'm with the American G.I. Forum. I'm here representing Eli
6 Sandoval, who's the state Chair. He has authorized me to come
7 before this Board.

8 When Ms. Ruiz first came to our attention, she was once
9 again encountering some difficulties as it related to her
10 appointment, more specifically to the conflict of interest. And
11 one of the areas that we have always had an interest in as far as
12 a veterans' organization is that, of course, of ensuring that the
13 health and well being of our veteran constituency is always well
14 taken care of.

15 Even before we decided to support Ms. Ruiz, she was
16 asked some very direct questions, particularly as it related to
17 her conflict of interest, or alleged conflict of interest. We
18 were satisfied that she would be able to stand the test of time,
19 and apparently it has also stood up to the test of time from the
20 Attorney General's Office.

21 So, with that, our organization does support Ms. Ruiz in
22 her appointment.

23 CHAIRMAN ROBERTI: Thank you.

24 MR. HENAO: Mr. Chairman, Members of the Board, my name
25 is Joseph Henao. I'm the past Chairman of the California
26 Hispanic Republican Council.
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1 I know Ms. Ruiz for about a year. I worked with her. I
2 am familiar with past Board members at the State Water Resources
3 Control Board and their work for at least 15 years. And I can
4 tell you that I've been extremely impressed with the way Ms. Ruiz
5 studies the issues. She is fair during the hearings; she's good
6 to the staff; she is very well respected by her fellow workers
7 and by the employees of the organization. And she's not only a
8 woman and a Hispanic, but a very well qualified individual for
9 this position.

10 As I say, I've been in many hearings, and she's been an
11 excellent person at that Board, and she's a real asset to the
12 Board. We strongly support her confirmation.

13 CHAIRMAN ROBERTI: Thank you very much.

14 MR. AMADOR: Hi. My name's Tony Amador, and I know a
15 few of the Members of the Committee.

16 Knowing what a tough position she's in today, having
17 been here three other times myself under the past administration
18 and once myself, I thought it would be worth the effort to give
19 up some vacation time to come here and kind of bolster her a
20 little bit.

21 I've known her for about a year. Quite honestly, I'm
22 very impressed. She's very, very concerned. She's willing to
23 commit herself to public service. She has sought my advice as a
24 friend. We have become very good friends, and I can tell you
25 that you won't get anything much better in the way of public
26 commitment.

1 So, I wholeheartedly endorse her and respectfully
2 request that you do the same thing.

3 CHAIRMAN ROBERTI: Very good, thank you.

4 Is there opposition in the audience? Please come
5 forward.

6 MR. GROSHONG: Mr. Chairman, Members of the Committee,
7 my name is Michael Groshong. Presently I live in Santa Rosa, but
8 for many years I lived in Bolinas, a small town in Marin County.

9 While I was living in Bolinas, I was first appointed to
10 and then elected to the local public utility district. And our
11 public utility district had mainly one function, and that was to
12 regulate the water for all of our homes in the community.

13 Several years before I was appointed to the board, there
14 was a couple of years of fairly low rainfall, and during this
15 time the city -- or the county -- excuse me, the town ran very
16 short of water, and the board at that time felt that there was
17 such a danger that they enacted a building moratorium where they
18 would not give out any more building permits until a new water
19 system was built so they would not run out of water any more.

20 I served on the board for several years, and left in
21 1978 to go to Santa Rosa. Approximately two years ago, myself
22 and all the directors of this utility district since 1970 and the
23 district itself was served with a multi-million dollar law suit
24 from the Pacific Legal Foundation, of which Ms. Ruiz was
25 apparently the -- I don't know the legal term, but she was
26 involved in it as one of the head people.

27
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1 And I felt that when I saw that she was nominated for a
2 state water position like this, that there was such a controversy
3 that in one day, when she was representing the Pacific Legal
4 Foundation, she was putting a duly elected local water board in a
5 position of bankrupting itself in order to pay the legal fees to
6 defend itself against this water suit, and the next day she was
7 going to be the Governor's appointee for a board very similar to
8 the one she had just finished putting a multi-million dollar suit
9 on.

10 I found it was just too much of an enigma to believe
11 that one day she could be one person, and the next day she could
12 be another person. It's a very complicated law suit, but I
13 thought that just the issue itself should be brought forward, and
14 I'd like to see what Ms. Ruiz or maybe any of you people have any
15 thoughts about the idea.

16 CHAIRMAN ROBERTI: The suit was against the board as
17 such?

18 MR. GROSHONG: The board and all of its ex-directors
19 since 1970, and I think Marin County was involved, and a couple
20 other local agencies.

21 CHAIRMAN ROBERTI: In their board capacity or in their
22 individual capacity?

23 MR. GROSHONG: Both. I was sued as an ex-member of the
24 board, and the board itself was sued as a board itself as it is
25 today.

26 CHAIRMAN ROBERTI: Who's defending you, the board, right
27 now?
28

1 MR. GROSHONG: I believe they were trying to get their
2 insurance company to defend them, but they weren't able to, so I
3 think their legal fees so far have come to approximately \$75,000.
4 That was the last figure that I heard.

5 CHAIRMAN ROBERTI: The board is being defended out of
6 the board's --

7 MR. GROSHONG: It's being taken out of their operating
8 expenses. And the operating expenses when I was there was
9 usually about \$120,000 a year, so you can imagine what a law suit
10 like this does to a small community as far as stretching its
11 resources.

12 CHAIRMAN ROBERTI: Thank.

13 Do you have any questions? Senator Petris.

14 SENATOR PETRIS: Did that have to do with the freeze
15 order you mentioned?

16 MR. GROSHONG: Water moratorium, yes. She and the
17 Pacific Legal Foundation represented several land owners that
18 wanted to build and could not build because of this moratorium.

19 SENATOR PETRIS: Well, you're not challenging her right
20 to sue, are you?

21 MR. GROSHONG: No, I wasn't challenging that. I just
22 thought it was very strange that on one day she'd be working for
23 the Pacific Legal Foundation, and suing us, who was trying the
24 keep the town from running out of water, and the next day she was
25 going to step into a state office.

26 SENATOR PETRIS: Doing what the board does.

27 MR. GROSHONG: Yeah.
28

1 SENATOR PETRIS: Maybe she's seen the light. Maybe
2 we'll ask her.

3 I think that's a legitimate concern you have. I guess
4 it depends on whether she's doing it in her capacity as an
5 attorney. I don't think the attorney makes the decisions; the
6 decisions are made by that Foundation.

7 MR. GROSHONG: Uh-huh.

8 SENATOR PETRIS: And they're entitled to representation.
9 It doesn't necessarily mean that she agreed with the policy
10 decisions, although I guess it's tougher to handle a case if you
11 don't believe in it.

12 Maybe we can ask her to comment on it after you've
13 finished, but I appreciate you bringing that forward.

14 I didn't know about that law suit, and I wondered if
15 there were any environmental things. This isn't environmental,
16 but it borders on it. I appreciate your bringing it forward.

17 MR. GROSHONG: Okay. Any other questions?

18 CHAIRMAN ROBERTI: Ms. Ruiz, you may respond.

19 MS. RUIZ: Yes, I was the attorney of record in that
20 case and was representing my clients' interests individually, and
21 it was on their behalf that the law suit was brought in order to
22 protect their particular property rights, and rights as we
23 interpreted them.

24 The situation he describes turns on actually the
25 existence of a 13-year old water moratorium, or water emergency,
26 that has been sustained in a community that has more than doubled
27 in size over that period of time. My clients became concerned
28

1 about the fact that they were being denied the right to develop
2 their property while the town continued to grow in light of the
3 water emergency. So I, on their behalf, filed a law suit.

4 CHAIRMAN ROBERTI: Who made the decision? How does the
5 Foundation work? Does the Board of Directors make the decision,
6 or do the individual attorneys to whom a client might register an
7 appeal make the decision? Who makes the decision as to whether
8 the case will be represented by the Pacific Legal Foundation?

9 MS. RUIZ: I believe that's a question -- Mr. Best of
10 the Foundation is present here to answer any questions as to how
11 the Foundation operates.

12 I, in that particular case, represented individuals and
13 was looking at simply bringing the litigation to protect their
14 causes of action.

15 CHAIRMAN ROBERTI: Did you make the decision, therefore,
16 yourself to represent them in that case?

17 MS. RUIZ: No, I made the recommendation to the
18 Foundation that this was an appropriate case.

19 CHAIRMAN ROBERTI: Why were the board members sued in
20 their individual capacities?

21 MS. RUIZ: Because of certain facts that were known in
22 the development of the case.

23 I don't believe it's really appropriate to discuss
24 ongoing litigation right now, given the fact that I am no longer
25 attorney of record, but that there was evidence at the time of
26 the filing of the law suit of that involvement of the defendants.

27 CHAIRMAN ROBERTI: Any further questions?
28

1 SENATOR PETRIS: Yes, Mr. Chairman.

2 Has the Foundation sued the Board you're presently
3 sitting on in any of the cases?

4 MS. RUIZ: I believe there was litigation against the
5 Board previously, but I was not involved in it in any way.

6 SENATOR PETRIS: What do you do if they file a suit in
7 the future? I mean, I asked you about the fines, now suppose you
8 impose a whopping fine on some company which is outraged by it,
9 and they think you're over stepping the bounds of reasonableness
10 in that particular case, and they sue the Board?

11 MS. RUIZ: I'm a member of that Board. Our counsel then
12 would step in and defend our action.

13 SENATOR PETRIS: Your current duty is to the Board, not
14 to the Foundation?

15 MS. RUIZ: That's correct.

16 SENATOR PETRIS: Thank you.

17 CHAIRMAN ROBERTI: Do I hear a motion?

18 SENATOR CRAVEN: Mr. Chairman, I'd like to move the
19 confirmation to the Floor.

20 CHAIRMAN ROBERTI: Senator Craven moves confirmation of
21 Ms. Ruiz to the Floor.

22 Let me speak to the motion. I intend to vote for
23 confirmation mainly because I believe this is one of those issues
24 where it's within the Governor's purview to establish policy. He
25 has the right to establish policy through the appointments that
26 me makes.
27
28

1 And as far as Ms. Ruiz' ability, I don't think there's
2 any question that she is a very able attorney to fill this
3 position.

4 As far as myself personally, if I were making the
5 appointment, which I obviously am not, I probably would not
6 choose to select somebody with a background in the Pacific Legal
7 Foundation, not because there's anything unethical about the
8 Foundation, but generally they represent a nonenvironmental
9 position, which I think and would hope would be the dominant
10 position on the Board. I'm just saying that for my own public
11 policy position, which I think is important. But that, I think,
12 is the kind of policy purview question which is within the
13 Governor's discretion when he makes the appointments.

14 Beyond that, I would say that we have a legitimate duty
15 to look into issues of conflict of interest or capability, but on
16 those two points, Ms. Ruiz clearly is both capable and not in
17 conflict as far as the qualification statute is concerned.

18 Secretary will call the roll.

19 SECRETARY WEBB: Senator Doolittle.

20 SENATOR DOOLITTLE: Aye.

21 SECRETARY WEBB: Senator Mello.

22 SENATOR MELLO: Aye.

23 SECRETARY WEBB: Senator Petris.

24 SENATOR PETRIS: Aye.

25 SECRETARY WEBB: Senator Craven.

26 SENATOR CRAVEN: Aye.

27 SECRETARY WEBB: Senator Roberti.
28

1 CHAIRMAN ROBERTI: Aye.

2 The vote is five to nothing, confirmation is recommended
3 to the Floor.

4 MS. RUIZ: Thank you very much, Senators.

5 (Thereupon this portion of the Senate
6 Rules Committee hearing was terminated
7 at approximately 3:45 P.M.)

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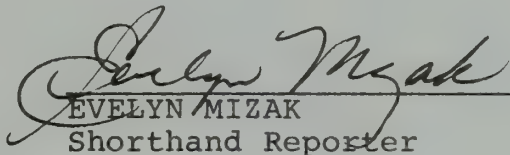
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I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

12th day of April, 1985.


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SENATE RULES COMMITTEE
STATE OF CALIFORNIA

Legislature

STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

WEDNESDAY, JUNE 5, 1985

2:00 P.M.

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11 ROOM 113

12 SACRAMENTO, CALIFORNIA

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17 2:00 P.M.

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26 Evelyn Mizak
27 Shorthand Reporter
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APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR JOHN DOOLITTLE

SENATOR MELLO

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR WILLIAM CRAVEN, Vice-Chairman

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

RICHARD CHAVEZ, Member,
State Personnel Board

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Governor's Appointee:RICHARD CHAVEZ, Member
State Personnel Board

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Certificate of Reporter

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P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: Governor's Appointee, Mr. Richard Chavez, Member of the State Personnel Board.

MR. CHAVEZ: Good afternoon, Senators.

CHAIRMAN ROBERTI: Good afternoon to you.

We'll ask you the same question we ask all the Governor's Appointees: Why do you feel you're qualified to assume this position?

MR. CHAVEZ: I was appointed to the Board approximately three years ago. And I think it's extremely important to have product knowledge.

During the last three years, I've worked directly with your directors and your employees to get a good working knowledge of what the state government is all about, because at the Board we handle punitive actions, and it's extremely important for me to know what's going on with your departments.

We've had full-blown hearings, as an example, with Women in Trade. We've had hearings for the Hispanics and also for the disabled, because it's important to have our state government work for us reflective of our California population.

When I was a young boy, when I first caught polio, my dad told me: There's nothing wrong with you; the body's only a means of transporting your mind around. And I think that's the philosophy that I carry with me and to the Board so that when we look at people, we look at their ability and nothing else.

CHAIRMAN ROBERTI: Very good. Thank you, Mr. Chavez.

1 Any questions or discussion? Is there any opposition to
2 Richard Chavez?

3 Seeing none, let me add that I think yours is an
4 outstanding appointment. Having worked with you in the past, we
5 know how concerned and qualified you are for this position. So,
6 I'm very happy to be able to cast an "aye" vote.

7 SENATOR DOOLITTLE: I move the confirmation.

8 CHAIRMAN ROBERTI: Senator Doolittle moves confirmation
9 be recommended to the Floor.

10 Secretary will call the roll.

11 SECRETARY WEBB: Senator Doolittle.

12 SENATOR DOOLITTLE: Aye.

13 SECRETARY WEBB: Senator Mello.

14 SENATOR MELLO: Aye.

15 SECRETARY WEBB: Senator Petris.

16 SENATOR PETRIS: Aye.

17 SECRETARY WEBB: Senator Craven. Senator Roberti.

18 CHAIRMAN ROBERTI: Aye.

19 The vote's four to nothing; confirmation is recommended
20 to the Floor.

21 MR. CHAVEZ: Thank you, Senators. I won't let you down.

22 CHAIRMAN ROBERTI: I know you won't.

23 (Thereupon this portion of the Senate
24 Rule Committee hearing was terminated
25 at approximately 2:15 P.M.)

26 --oo0oo--
27
28

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That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

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7th

day of June, 1985.


EVELYN MIZAK
Shorthand Reporter

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Senate

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APPEARANCES

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SENATOR WILLIAM CRAVEN, Vice-Chairman
SENATOR JOHN DOOLITTLE
SENATOR MELLO
SENATOR NICHOLAS PETRIS

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CLIFF BERG, Executive Officer
PAT WEBB, Committee Secretary
RICK ROLLENS, Consultant on Bill Referrals
NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

MARIAN BAGDASARIAN, Member,
Board of Trustees,
California State University
ROBERT GLEN BORG, Superintendent,
California Rehabilitation Center at NORCO
STANLEY CUBANSKI, Chief Deputy Director,
Department of Health Services
HARRIETT WIEDER, Member,
State Air Resources Board

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P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: Governor's Appointees, Marian Bagdasarian, Member of the Board of Trustees of the California State University.

Sorry you had to wait through all this.

Ms. Bagdasarian, we'll ask you what we ask all the Governor's Appointees, and that's why you feel you're qualified to assume this position?

MS. BAGDASARIAN: Well, I have been a teacher in the Fresno City Unified School District for the last 14 years. I have been a master teacher for most of those years. I am a graduate of the CSU Fresno, and have a great interest in education.

CHAIRMAN ROBERTI: Fine.

Are there any questions of Ms. Bagdasarian? Is there any opposition?

SENATOR DOOLITTLE: Move confirmation.

CHAIRMAN ROBERTI: Senator Doolittle moves confirmation. Secretary will call the roll.

SECRETARY WEBB: Senator Doolittle.

SENATOR DOOLITTLE: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris. Senator Craven. Senator Roberti.

CHAIRMAN ROBERTI: Aye.

1 The vote is three to nothing; Ms. Bagdasarian is adopted
2 into the Senate.

3 (Laughter.)

4 CHAIRMAN ROBERTI: You got off easy because we're in the
5 middle of 101 other things. We know you're very qualified; we've
6 looked at your resumes.

7 (Thereupon the Committee considered
8 rule waiver requests.)

9 CHAIRMAN ROBERTI: Governor's Appointments, Robert Glen
10 Borg.

11 Senator Craven, you Chair.

12 SENATOR CRAVEN: Yes, sir.

13 If you will, tell us why you feel you're qualified for
14 this position, please.

15 MR. BORG: Thank you.

16 I have 25 years experience in Corrections. And during
17 that 25 years, I've worked at 10 different institutions, covering
18 every custody classification from minimum, like in your camps, to
19 maximum, such as Folsom Prison, and both male and female
20 institutions.

21 I have a good basic understanding of institutions, as
22 I've worked on line positions as a correctional officer and as a
23 supervisor, and I have 17 years in various administrative
24 positions in the Department.

25 I've also served as a consultant to other states in
26 Corrections.

I have a Bachelor of Science degree from the School of Social Work at Sacramento State, with a special in correctional administration. I have a lifetime teaching credential in correctional science, and I taught for seven years at the community college level.

I am pro-active. I stay informed and involved so that I can use this experience and education to manage the institution in an effective and efficient manner.

I think the Department of Corrections right now is facing some of its biggest challenges it ever has, and I'd like to be a part of meeting that challenge. I have the experience, education, and motivation to successfully represent the state of California as Superintendent of the California Rehabilitation Center.

CHAIRMAN ROBERTI: Thank you.

Any questions? Senator Petris.

SENATOR PETRIS: What's a lifetime credential in that field? Are there temporary credentials?

MR. BORG: Yes, there are. At the Chaffey College, which is a community college in Chino, I have the credential which is for lifetime.

SENATOR PETRIS: I'm tempted to ask you how you propose to meet the challenges, but we don't have enough time for that.

MR. BORG: It would take some time.

SENATOR PETRIS: I've waive it.

Thank you.

CHAIRMAN ROBERTI: Any further questions of Mr. Borg?

1 SENATOR CRAVEN: Move his confirmation be approved to
2 the Floor.

3 CHAIRMAN ROBERTI: Senator Craven moves confirmation.
4 Secretary will call the roll.

5 SECRETARY WEBB: Senator Doolittle. Senator Mello.

6 SENATOR MELLO: Aye.

7 SECRETARY WEBB: Senator Petris.

8 SENATOR PETRIS: Aye.

9 SECRETARY WEBB: Senator Craven.

10 SENATOR CRAVEN: Aye.

11 SECRETARY WEBB: Senator Roberti.

12 CHAIRMAN ROBERTI: Aye.

13 The vote is four to nothing; Mr. Borg's confirmation is
14 recommended to the Floor.

15 The next appointment is Mr. Stanley Cubanski, Chief
16 Deputy Director of the Department of Health Services.

17 Mr. Cubanski, I think when we terminated the one
18 hearing, we asked for a list allegedly put together of toxic
19 sites that the Department had cleaned up.

20 Was there such a list? Is there such a list?

21 MR. CUBANSKI: Mr. Chairman, for the record, I am Stan
22 Cubanski, unconfirmed Chief Deputy Director of Health Services
23 for the last 11 and a half months.

24 After I left the last hearing approximately a month and
25 a half ago, I returned to the Department and found out that we
26 had released a list, as I had indicated, but in fact copies had
27 not been submitted to the Senate, as indications were given to me
28 in this meeting.

1 We in the Department immediately hand carried copies to
2 the offices of the Members of this Committee and mailed copies of
3 the list to the remaining Members of the Senate.

4 As I indicated in the last hearing, there were some
5 errors in that list. The Auditor General, subsequent to the last
6 hearing, has issued a report that has confirmed what I have said:
7 there were errors in the list. We'll be more attentive to those
8 details in the future in terms of compiling work records, lists
9 of things that we have done.

10 CHAIRMAN ROBERTI: Yes, I would tend, for a good working
11 relationship, to think that is the problem. When we hear of a
12 work record and a completion of an effort, obviously the
13 Legislature has an interest in that.

14 MR. CUBANSKI: I understand.

15 CHAIRMAN ROBERTI: And it becomes -- the kind word is
16 frustrating when we can't get that.

17 However, I sense myself that's a Department problem and
18 not a personal problem as far as your confirmation is concerned.

19 MR. CUBANSKI: Thank you.

20 CHAIRMAN ROBERTI: Any further discussion? We had a
21 lengthy discussion last month.

22 Senator Mello.

23 SENATOR MELLO: Just a couple questions. I do
24 appreciate getting a copy of the report that I questioned you
25 about which you hand delivered either that afternoon or the next
26 day.

27 You've been in the Department what, 19 years?
28

1 MR. CUBANSKI: I've been in state service for 15 years,
2 in the Department of Health Services for approximately a year
3 now, Senator.

4 SENATOR MELLO: In going over the Auditor General's
5 report, there are some what I would call very disturbing
6 statements that I don't want to attribute to your service, but I
7 think going back, lapping back about four or five years, and I'm
8 just going to read a couple paragraphs.

9 This is on the third paragraph of the Summary it says:

10 "In addition, we found that the
11 department did not accurately report
12 the quantities of hazardous waste
13 cleaned up at 55 of the 125 sites.
14 The department correctly reported the
15 quantity of hazardous waste cleaned
16 up at 51 of the 125 sites. Records
17 were not available to verify the amount
18 of hazardous waste cleaned up at 19 sites."

19 That, of course, I think is, for a Department that's out
20 to protect the health and public safety of the citizens of
21 California, that of course doesn't speak well for the Department.

22 Their conclusion is also a brief paragraph. It says:

23 "Between March 1980 and April 1985, the
24 Department of Health Services was involved
25 in the cleanup of 125 hazardous waste sites.
26 The department had primary responsibility
27 for ensuring the clean up of 97 sites; for
28

1 25 other sites the department shared the
2 cleanup responsibility with other govern-
3 mental agencies. Records documenting the
4 extent of the department's involvement in
5 three sites were not available. For
6 55 of the 125 sites, the department did not
7 accurately report quantities of hazardous
8 waste that were cleaned up. Furthermore,
9 we could not always verify the department's
10 involvement in all phases of the cleanup
11 process because the department did not
12 always document its participation in the
13 clean up of these sites. On May 14, 1985,
14 the department issued new procedures that
15 require its staff to document the department's
16 involvement in each cleanup of a hazardous
17 waste site."

18 Presumably that came under your supervision, then, that
19 May 14th directive.

20 All I'm pointing out, and again I'm not assessing these
21 conclusions towards your regime, but I just think that the people
22 of California cannot tolerate in the Health Department, or any of
23 its departments, the kind of inadequate supervision of very toxic
24 materials that pose a real threat and danger to the citizens of
25 our state.

26 MR. CUBANSKI: I would agree with you on that, Senator.
27
28

1 I think when we discovered what I want to consider some
2 lax record keeping, and I don't think there's a question in terms
3 of the sites that were cleaned up, that they were cleaned up and,
4 in fact, left in an unhealthy manner, if you will. I think in
5 terms of our own identification of our own problems, and the
6 Auditor General's identification of our own problems is that we
7 were somewhat lax in that particular division in terms of record
8 keeping. I think the Auditor General's report confirms that.

9 Director Ken Kizer, Mr. Moskowitz, who was still with us
10 at the time in May, and Mr. Wilcoxon, the manager with day-to-day
11 responsibility for toxics, took a look at the process, basically,
12 identified we had some weaknesses, and as a result of a memo that
13 went out at the end of May, we believe we've corrected our tax
14 record keeping, if you will.

15 CHAIRMAN ROBERTI: Is there any opposition to Mr.
16 Cubanski?

17 Do I hear a motion?

18 SENATOR CRAVEN: I would so move.

19 CHAIRMAN ROBERTI: Senator Craven moves Mr. Cubanski's
20 confirmation to the Floor.

21 Senator Petris.

22 SENATOR PETRIS: I went into some things on the
23 registries that I'd like to complete.

24 We talked about the fact that you're pushing 11 more
25 counties, and ultimately hope to go statewide, and there's a
26 five-year schedule.

1 But you testified last time that at the end of the first
2 year, you're going to take a good look to see how things are
3 going, and how much you can do in that direction.

4 I'm curious about the site selection, so to speak, on
5 registry. In looking at the map, which I'll send over to you, I
6 notice that they seem to be grouped. The cancer registry placed
7 counties are grouped in, you might say, certain parts of the
8 state, and there's what appears to me on the map to be a glaring
9 vacuum in the Central Valley, which in the perception of a lot of
10 us really is one of the biggest problem areas of all the toxics
11 that are being used on the farm, and which has seeped into the
12 water. We have reports of one-third or one-fourth of all the
13 wells in this state are contaminated, and on and on and on.

14 I wonder if you could comment on how it happened that
15 such a hole was created up and down the Central Valley?

16 MR. CUBANSKI: Senator, if I could, when we last
17 discussed the registries, we discussed both the cancer registry
18 and the birth defects registry.

19 Are your comments in terms of the hole directed at which
20 registry, then?

21 SENATOR PETRIS: Cancer.

22 MR. CUBANSKI: As we indicated last time, we currently
23 have registries in areas where we have 50 percent of the state
24 covered, and the Governor, in terms of his action on the budget
25 for '85-6, both approved some additional counties and, as you
26 indicated on this map, vetoed some others.

27 SENATOR PETRIS: The red lined ones are the vetoes.
28

1 MR. CUBANSKI: I understand.

2 SENATOR PETRIS: They all seem to be in that particular
3 area. I'm wondering how you arrived at that? How did people
4 advise him to short change the Valley so much?

5 MR. CUBANSKI: I don't know if I would put it that way,
6 Senator. I think the advice we gave him was to leave within the
7 budget an expansion of the registry to cover, as I've indicated,
8 we're currently covering 50 percent of the state, to go from 50
9 to 80 percent of the state.

10 I will acknowledge that when you go to 80 percent of the
11 state, that means 20 percent of the state is uncovered. I guess
12 that 30 percent, three-tenths of the state for '85-6, was all the
13 Department felt we could bite off at this point.

14 As I indicated and testified last time, we would at the
15 end of the year be evaluating how successful we have been in that
16 expansion to 80 percent of the state, and if it looked like the
17 data that we were getting in was good, we would probably be
18 coming back before you. That remains, Senator.

19 SENATOR PETRIS: I understand that.

20 MR. CUBANSKI: We don't have an anti-Valley bias, if you
21 will.

22 SENATOR PETRIS: But we talked in terms of percentages
23 of the state. I don't know what that means. Last time you
24 talked about population.

25 MR. CUBANSKI: That is still, we're talking population.

26 SENATOR PETRIS: But if you have an area where everyone
27 acknowledges, and reports of various state agencies themselves
28

1 have shown a significant exposure and risk in a given area, it
2 would seem to me there ought to be at least one or two registries
3 in that area.

4 You know, we have this big problem. One of our
5 committees, at a hearing during the recess, down in Kern County,
6 that's kind of at the lower end of this pocket, but --

7 MR. CUBANSKI: I think, again, if you look at this map,
8 we have expanded in '85-6 into Kern, which again, if the issue is
9 one of pesticides or agricultural areas, we have expanded into
10 Kern, into Fresno, into Yolo, into Sacramento, counties where
11 there is some agriculture, where there is some pesticide usage.

12 SENATOR PETRIS: Also in Lassen. I don't know what's
13 going on up there. Maybe Senator Doolittle --

14 MR. CUBANSKI: We had several instances in Lassen where
15 it appeared that there were clusters of, in a sense, unexplained
16 cancer in Lassen County, which we basically made the program
17 decision to go into Lassen before, for example, going into
18 Amador, or going into Tulare.

19 I don't think the program's decisions were perfect, but
20 at the same time, as I've indicated, we're going from 50 percent
21 to 80 percent of the state's population which is covered. We are
22 expanding the registry for the first time into some Valley
23 counties, including some big ones where agriculture is big:
24 Fresno, Kern. I think we've bit off what we can chew on for
25 '85-6, Senator.

26 SENATOR PETRIS: What determines that? The number of
27 personnel you have? Budget considerations?
28

1 MR. CUBANSKI: No, as I indicated in the hearing last
2 time, we had taken two different approaches on registries. In
3 the cancer registry area, the approach that we have now got in
4 place in 50 percent of the state is --

5 SENATOR PETRIS: Contract?

6 MR. CUBANSKI: -- is the hospitals, where the cancers
7 are initially reported, are aggregating the data and submitting
8 that data to my health epidemiological folks.

9 The expansion there in the cancer registry from 50 to 80
10 percent of the state is being guided by money, obviously. It's
11 being guided by state personnel, obviously. But probably the
12 most important consideration is the ability and the willingness
13 of county government and hospitals to work with my folks and to
14 report that data.

15 The approach we took on the other registry, the birth
16 defects registry, was in fact to have state staff go into the
17 hospitals and pick up the data manually, if you will. I don't
18 know if the approach we've taken on the birth defects registry is
19 the right way to go, for us going out to get the data as opposed
20 to having hospitals come in, but having the hospitals send in the
21 data seems to be working in the cancer registry area.

22 SENATOR PETRIS: So actually you're trying both ways.
23 The hospitals are doing it one way, and the state another.

24 MR. CUBANSKI: And we go out and do it another way now.

25 SENATOR PETRIS: Can you refresh my recollection on the
26 reason for saying it's all you can chew right now, limiting the
27 expansion to 11 counties?
28

1 As I understand it, the staff recommendation was to go
2 statewide because of the urgency of the problem, the need, and
3 the time lag; it takes such a long time to gather these things
4 and get the right data from which to draw conclusions. The
5 sooner you start the better, I think, was their understanding.

6 MR. CUBANSKI: We had a --

7 SENATOR PETRIS: That was rejected.

8 MR. CUBANSKI: We had a staff recommendation. We've had
9 probably six, maybe seven, drafts of the cancer registry
10 expansion report, if you will. The final draft recommended we go
11 forward with the cancer registry an additional 11 counties. The
12 first draft that came up from the staff said expand statewide,
13 and expand statewide now.

14 We took a look at the capacity, both our own internal
15 capacity to expand statewide immediately, and the willingness and
16 readiness of hospitals and counties to do it now. And I think
17 management of the Department disagreed with staff.

18 I don't think the decision making process we use in the
19 Department is any different than any other department's or any
20 different than your own. You make judgments that sometimes go
21 contrary to what your staff is recommending.

22 SENATOR PETRIS: Well hopefully we all do that from time
23 to time.

24 What I'm asking is: What was the controlling factor
25 that persuaded management to reject that particular
26 recommendation, other than capacity?

27

28

1 MR. CUBANSKI: Capacity, willingness of hospitals to go
2 along with us and provide data --

3 SENATOR PETRIS: Did you meet a little resistance from
4 the hospitals originally?

5 MR. CUBANSKI: I wouldn't say we're getting resistance
6 from hospitals, but we are making systems changes in large
7 organizations, and our attempts to do that simply take time. I
8 don't think you can make massive changes in any organization and
9 expect things to go smoothly and to work immediately.

10 SENATOR PETRIS: The last time you indicated you hadn't
11 closed the door on statewide --

12 MR. CUBANSKI: We have not.

13 SENATOR PETRIS: -- and you already have your year-end
14 review.

15 What are you looking for? What would determine or
16 dictate a change in policy? Would it be a sudden rash of
17 enormous numbers of cases coming in in different parts of the
18 state?

19 MR. CUBANSKI: You asked be about Lassen County. Quite
20 frankly, if we saw in some counties where we do not yet have a
21 registry, if we saw in any one of those counties clustering of
22 cancer incidents that had not previously been reported, that
23 county would likely be -- let's say we're going to go next year
24 from 80 to 90 percent, if you will. That county would likely be
25 included within the 10 percent expansion area, as opposed to not
26 being in the expansion area.

1 The other thing is, I think you've got to realize that a
2 registry is only a tool. I don't want to say it's analogous to a
3 hammer; maybe it's analogous to a computer. And you can have the
4 tool, but you've got to know how to use it.

5 SENATOR PETRIS: I was just wondering which is more
6 useful, but it's okay.

7 MR. CUBANSKI: I don't care to respond to that, Senator.

8 We think that the tool will be a helpful one. But if it
9 does work, and the cancer registry in 80 percent of the counties
10 -- let us say we find out as a result of this registry that a
11 particular chemical, which previously has been thought to be
12 harmless, now shows there some indication that this chemical
13 causes cancer. I think the evidence is going to turn up from 80
14 percent of Californians as opposed to needing the expansion to
15 the balance of the population. We may, in fact, be able to use
16 the tool as effectively with only 80 percent of the state
17 brought in as opposed to bringing in 100 percent of the state.

18 We may want to go to 100 percent, but we may get so much
19 data out of the 80 percent system that we may, in fact, give you
20 so much information that we confront you with another problem:
21 Hey, these 33 chemicals cause cancer. What do we as a society do
22 with that? Do we ban the chemicals or the use of the chemicals?
23 Do we impose other kinds of controls?

24 I think you'll be wrestling with some of those things.

25 SENATOR PETRIS: Hopefully, that's what the whole thing
26 is for, the registry, to find out how many there are, and what
27 they're doing, and so forth. You know, we want to tackle that.

28

1 I don't think anybody's going to shirk from that. And the more
2 you're able to flush out those kinds of questions, I think the
3 more effective the registry is going to be.

4 Let me just touch on birth defects. We have the same
5 kind of pattern. There was a report last year; the Governor
6 approved it for an expansion of, what, ten counties?

7 MR. CUBANSKI: The report that the Governor approved
8 last year, as I indicated in the prior testimony, Director Gary
9 Macomber, who's the Director of the Department of Developmental
10 Services, was charged by Secretary Dave Swoap of convening what
11 was called the Developmentally Disabled Prevention Task Force.
12 That task force, which included representatives of the Department
13 of Health Services, recommended to Secretary Swoap and to the
14 Governor that as part of this Developmentally Disabled Prevention
15 effort, we expand the birth defects registry -- it's currently
16 basically in the Bay Area -- that we expand that to an additional
17 ten counties during '85-86.

18 The only thing that's changed since the last time I
19 testified is that my staff has now completed a draft report
20 telling us in the Department of how we should go about expanding
21 to those additional ten counties.

22 CHAIRMAN ROBERTI: Could I interrupt you. We don't
23 normally do this; however, Supervisor Wieder, the Governor's
24 Appointee to the State Air Resources Board, has a 4:00 plane to
25 catch and has been sitting here.

26 MR. CUBANSKI: Let me step aside for a moment.
27
28

1 CHAIRMAN ROBERTI: Yes, so we can put you off the hot
2 seat anyway.

3 I don't think your confirmation is controversial.

4 MS. WIEDER: I hope not. I've enjoyed listening.

5 CHAIRMAN ROBERTI: Welcome to the Senate.

6 MS. WIEDER: Thank you, Senator. Thank you very much.

7 SENATOR PETRIS: You're probably glad you have to catch
8 a plane.

9 CHAIRMAN ROBERTI: It's just not fair that "W" is always
10 heard last.

11 MS. WIEDER: Thank you, I was thinking of that.

12 CHAIRMAN ROBERTI: We'll ask you why you feel you're
13 qualified to assume this position.

14 Mrs. Wieder's a well-known Supervisor from Orange
15 County.

16 MS. WIEDER: Thank you very much, Senator.

17 I feel that I'm qualified to serve on the State Air
18 Resources Board because of the term I served as the Mayor of the
19 City and Councilman of the City of Huntington Beach, my two terms
20 on the County Board of Supervisors and my two years on the South
21 Coast Air Quality District Board, and in all instances my
22 priority concerns have been the environment, and particularly air
23 quality. I'd like to be part of achieving what this state is
24 challenged to achieve by EPA.

25 CHAIRMAN ROBERTI: Thank you very much, Supervisor.

26 Any questions?

27 SENATOR CRAVEN: Move confirmation.
28

1 CHAIRMAN ROBERTI: Senator Craven moves confirmation be
2 recommended to the Floor.

3 Any opposition?

4 Secretary will call the roll.

5 SECRETARY WEBB: Senator Doolittle.

6 SENATOR DOOLITTLE: Aye.

7 SECRETARY WEBB: Senator Mello. Senator Petris.

8 SENATOR PETRIS: Aye.

9 SECRETARY WEBB: Senator Craven.

10 SENATOR CRAVEN: Aye.

11 SECRETARY WEBB: Senator Roberti.

12 CHAIRMAN ROBERTI: Aye.

13 The vote is four to nothing; confirmation is recommended
14 to the Floor.

15 MS. WIEDER: Thank you for your consideration.

16 CHAIRMAN ROBERTI: We'll return to Mr. Cubanski's
17 confirmation hearing.

18 MR. CUBANSKI: I think the only thing that's changed in
19 the birth defects area since last time I was here was that my
20 staff has now completed a draft report. That draft report
21 basically, until it's approved by the Governor's office, is
22 confidential, but the report is being presented right now on a
23 confidential basis to the task force, and Director Kizer conveyed
24 a birth defects task force a couple of months ago.

25 SENATOR PETRIS: When is the --

26 MR. CUBANSKI: The report is being presented to the task
27 force today.

28

1 SENATOR PETRIS: When does that get released?

2 MR. CUBANSKI: I would say it would be a couple of
3 weeks. I hesitate to develop any schedules for the Governor's
4 office. I do not do that.

5 I would say that the Governor's office will have a
6 response on our draft report within a couple of weeks.

7 SENATOR PETRIS: Now, the last time here, we talked
8 about two bills, three actually -- no, Connelly's was on the
9 other side, the cancer thing. But on this end of it, the Seymour
10 bill, Orange County, and the Vasconcellos bill statewide.

11 Has the Department taken a position on those two bills?

12 MR. CUBANSKI: Our position on both those bills is
13 comparable to our recommendations in this report. If the
14 Governor's office goes with the Department's recommendation, both
15 of those bills in modified or amended form would be vehicles that
16 I think we would say would become enacted.

17 SENATOR PETRIS: That's good. The question, I guess,
18 depends on what the modification is. If Vasconcellos' goes down
19 to one county, that's not a very good modification.

20 MR. CUBANSKI: No, we don't -- let me put it to you
21 this way, Senator, without tipping my hand.

22 Secretary Swoap, in the report that has been approved by
23 the Governor's office, called for a ten county expansion. I
24 couldn't survive too long in my job by disagreeing too many times
25 with Secretary Swoap. And if Secretary Swoap has called for a
26 ten county expansion, I don't think you're going to see the
27 Department's report calling for a one county expansion.
28

1 SENATOR PETRIS: Now, once you embark on the expansion,
2 I assume your priorities for picking counties is the same as for
3 cancer; depends on the cluster and how much activity.

4 How do you determine?

5 MR. CUBANSKI: It depends, again, on clustering, but at
6 this point -- and we have seen approximately 30 or 35 suspected
7 clusters of birth defects that the state staff that operate out
8 of our public health lab in Berkeley have looked at. In the bulk
9 of the 35 cases, it may in fact have been clustering, but it was
10 essentially random.

11 We don't have much good data on birth defects, which is
12 one of the reasons why we do want to expand the birth defects
13 monitoring program. To a great extent we are being guided right
14 now on county willingness. There have been a number of counties
15 which, prior to the state expansion, have been putting in county
16 funding; some have been using federal revenue sharing money; some
17 have been using county general fund. But the counties have been
18 using county funding for a local registry.

19 I think our expansion is going to target on where the
20 local population has indicated a willingness, by putting their
21 wallet on the line, to expand. I think we'll try to piggyback on
22 the systems that they have in place and expand again into those
23 areas where local willingness has already been demonstrated.

24 SENATOR PETRIS: That's a good policy.

25 I don't have any more questions, Mr. Chairman.

26 Thank you very much, and good luck in your endeavors.
27
28

1 CHAIRMAN ROBERTI: Any further questions of Mr.
2 Cubanski?

3 SENATOR CRAVEN: I move confirmation.

4 CHAIRMAN ROBERTI: Senator Craven moves confirmation be
5 recommended to the Floor.

6 Is there any opposition?

7 The Secretary will call the roll.

8 SECRETARY WEBB: Senator Doolittle.

9 SENATOR DOOLITTLE: Aye.

10 SECRETARY WEBB: Senator Mello. Senator Petris.

11 SENATOR PETRIS: Aye.

12 SECRETARY WEBB: Senator Craven.

13 SENATOR CRAVEN: Aye.

14 SECRETARY WEBB: Senator Roberti.

15 CHAIRMAN ROBERTI: Aye.

16 The vote is fourth to nothing; Mr. Cubanski's
17 confirmation is recommended to the Floor.

18 MR. CUBANSKI: Thank you, and thank you, Senator Torres.

19 (Thereupon this portion of the Senate
20 Rules Committee Hearing was terminated
21 at approximately 3:40 P.M.)

22 --oo0oo--
23
24
25
26
27
28

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

22nd day of August, 1985.


EVELYN MIZAK
Shorthand Reporter

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APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice-Chairman

SENATOR JOHN DOOLITTLE

SENATOR MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

MICHAEL MARK MICHALKO, Director,
California State Lottery Commission

JOHN M. PRICE, Member,
California State Lottery Commission

HOWARD E. VARNER, Member,
California State Lottery Commission

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P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: Governor's Appointees appearing today, Mr. Michael Mark Michalko.

We'll ask you what we ask all the Governor's Appointees, and that is why you feel you're qualified to assume this position?

MR. MICHALKO: Well, Senator, first of all, let me thank you for asking that question; and secondly, let me tell you a little bit about my background.

I spent eight years with the Ohio State Lottery, the last five as their General Counsel. In that capacity, I had substantial involvement with virtually every major aspect of the operation of that very successful state lottery.

I'm now in my ninth year of association with lotteries, and I feel I have a very thorough knowledge of the overall lottery business, particularly my experience as counsel, put me in a position get familiar with many of the major issues that we will be facing here in California. I've worked very closely with a number of executive directors in Ohio, and I feel I have the appropriate qualifications for this job.

CHAIRMAN ROBERTI: Fine, thank you.

Are there any questions of Mr. Michalko?

Let me start off my asking you one, and there's been some concern by Members of the Legislature that the Lottery Commission believes that the commission of the lottery system itself would come under the Legislature's review and control as far as its own budget is concerned.

1 What is your position on that?

2 MR. MICHALKO: Well, Senator, I don't believe that the
3 Commission has taken any formal position on that question, but
4 basically I believe that the initiative as it was structured, and
5 my understanding of the initiative, Proposition 37, is that it
6 did not contemplate legislative control over the budget.

7 I believe that we have a number of controls in place
8 right now. Specifically, the Commission has budgetary control.
9 We're audited by the Controller of the state. We have a number
10 of independent auditors who will be monitoring our budget.

11 I believe that my personal position would be that we
12 would like to see the mandates of the initiative carried forth in
13 the manner that they are at the present time prior to having the
14 Legislature exercising specific control over the budget.

15 CHAIRMAN ROBERTI: We have a Legislative Counsel
16 opinion, maybe it will be the subject of a court case at one
17 point, indicating that the Legislature would have control in this
18 area, but I tend to understand that it's been nebulous.

19 Senator.

20 SENATOR CRAVEN: Thank you.

21 Mr. Michalko, has the machinery, that is the physical
22 machinery, for the implementation of your purview been decided
23 upon and has it been purchased at this time?

24 MR. MICHALKO: Senator, several things have been
25 purchased in terms of equipment for the operation of the lottery.
26 We currently are in the process of getting buildings organized.
27 We have contracts for the lease of several buildings across the
28

1 state for our regional and district offices. As you may know, we
2 have a headquarters building that's currently under construction
3 here in Sacramento.

4 In addition to that, we have contracted for the purchase
5 of the tickets that we'll be using in the first and second games.
6 We have started to begin the process of acquiring vehicles and
7 all of the necessary equipment associated with the operation of
8 the lottery at this point. We're also in the process of testing
9 some of the computer equipment that'll be necessary to have the
10 appropriate accounting procedures in place before we start the
11 games.

12 SENATOR CRAVEN: Is any of the equipment envisioned to
13 be used manufactured in the state of California?

14 MR. MICHALKO: In respect to the tickets themselves, the
15 tickets are being produced outside of the state of California, in
16 Georgia. As you know, there is a law suit on that very issue.

17 SENATOR CRAVEN: I was talking more about the equipment
18 itself as opposed to the --

19 MR. MICHALKO: Well, the equipment would be standard
20 things like basically you would have in any office: desks, and
21 chairs, and typewriters, and things of that nature.

22 SENATOR CRAVEN: No, that's not it. I'm so lacking in
23 technical orientation, I really don't know how to couch this.

24 I'm talking about the equipment that if I went in as a
25 bettor, you would punch up my bet on a ticket.

26 MR. MICHALKO: I believe, Senator, that what you're
27 talking about is the computerized terminals and equipment --
28

1 SENATOR CRAVEN: Right.

2 MR. MICHALKO: -- that will be used for the online
3 games.

4 SENATOR CRAVEN: Yes.

5 MR. MICHALKO: We will not have that type of equipment
6 in place until sometime later next spring; that's a whole
7 different type of game.

8 We're starting with what are known as instant tickets,
9 the basically preprinted tickets where a player simply rubs off
10 the covering and feels whether it's a winning ticket.

11 The equipment that you're referring to is currently in
12 the procurement process right now. We just issued last week the
13 initial draft of the request for proposals for that computer
14 equipment.

15 SENATOR CRAVEN: I see.

16 MR. MICHALKO: We don't know right now who will respond
17 to that request for proposals, so at this point I can't tell you
18 who will be the successful vendor.

19 SENATOR CRAVEN: If a proposal came back to you which
20 included all of the specifications which you delineated and had
21 some in addition, that would not of necessity be a disqualifying
22 attribute; would it?

23 MR. MICHALKO: Absolutely not.

24 SENATOR CRAVEN: I don't mean to be arcane about this
25 thing, but I have a manufacturer in my district which sells
26 equipment all over the world. And I have no reason to believe
27 that they aren't as good as they say they are. I just have hoped
28 that they could have a shot at your operation.

1 MR. MICHALKO: Senator, I can assure you that that's one
2 of the priorities, is for us to have as much competition as
3 possible in that procurement, but we want to get the best
4 technical equipment that's available, and that will be the basis
5 of the decision for that equipment.

6 SENATOR CRAVEN: Sometime I'd like to talk to you. I
7 know you very kindly offered to do that, and I'd be very happy to
8 do that. I could even talk about John Carroll University, if
9 you'd like

10 MR. MICHALKO: Very good, I'd love to do that some day.

11 SENATOR CRAVEN: Thank you.

12 CHAIRMAN ROBERTI: Any other questions? Senator Mello.

13 SENATOR MELLO: I guess that magic day is when?
14 Everyone's waiting for the first ticket to be sold. The voters
15 passed it last November, and there's been just all these delays.
16 I have people in my district that are saving their dollars to go
17 in and purchase, and when is all this going to happen?

18 MR. MICHALKO: Well, first of all, your last sentence is
19 very encouraging to me. I hope that people in every district are
20 ready to go out and play.

21 We have not yet set a formal date. As you know,
22 virtually every day the newspaper carries our position, which is
23 that we will start the games in late September or early October.

24 One of the reasons that I've been personally hesitant to
25 set a very specific date within that narrow time frame is that
26 there are a number of things that have to occur before we can
27 feel comfortable with going forward and selling the tickets.

1 As you know, the buildings are still under construction.
2 We're testing computer equipment at the moment. In fact, that is
3 the single biggest thing that we're doing right now. I want to
4 make sure that all the proper controls are in place before we go
5 out and sell those tickets.

6 At this point, I have every reason to believe that we
7 will have tickets on sale either in that final week of September
8 or the first week of October. The only question is to set a
9 specific date, and we have not yet done that.

10 SENATOR MELLO: Well, but you can just imagine, eleven
11 months since the voters acted, and even before that time the
12 companies were gearing up.

13 Oregon was able to put theirs in play, and Oregon's not
14 a small state, but somewhat smaller than California, and they
15 sold their first ticket back in March.

16 MR. MICHALKO: Senator, one of the things that I think
17 is important to recognize here is that you have to take every
18 single thing that Oregon did and times it by a factor of ten.
19 Oregon started out with approximately 40 million tickets for
20 their first game; we will have 400 million tickets in our first
21 game alone. By the time we get through the first year, we will
22 have increased by 50 percent the total number of tickets sold in
23 23 lottery jurisdictions last year. The State of California will
24 increase that by 50 percent.

25 So, I think it's a question of the magnitude of the job.
26 I certainly recognize that Oregon started earlier. I think our
27 job is more difficult in the sense that we have far bigger tasks
28 to accomplish here.

1 I can assure all of you Senators that we are moving as
2 rapidly as we possibly can while making sure that the proper
3 controls are in still in place.

4 SENATOR MELLO: Well, the point is, the hardest ticket
5 to sell is that first one. But once you get into that first
6 mode, then the rest just becomes -- I mean, whether you do 100
7 million or 200 million, you know, the numbers are so great.

8 But the timing, I just think there's been a tremendous
9 waste of time in getting this whole procedure started. I'm not
10 blaming you for that because you just came on the scene, but I
11 think that the state, a lot of this money going to education has
12 been lost because of the delays.

13 Just two more brief questions.

14 You mentioned about the tickets being printed in
15 Georgia. This happened in my district, that Scientific Games
16 built a plant even before the voters had decided on this. Now,
17 it's just unreal for me to think that we are strapped into
18 allowing tickets to be printed in another state to be used here
19 in California.

20 Are you going to challenge that opinion in court?

21 MR. MICHALKO: Well, Senator, we have not taken a
22 position on that.

23 Currently the vendor, as you know, Scientific Games, is
24 involved in a lawsuit with the printing company in Georgia. That
25 case is being heard in Georgia right now.

26 I think it would be inappropriate for us to interject
27 ourselves into that battle, if you will, at this point. I would
28

1 like to see what the outcome of that is before we make a
2 recommendation on our position.

3 SENATOR MELLO: I think that now that you're here in
4 California, relocated from Ohio, we'd like to see you out there
5 trying to help California out all we can. We need all the help
6 we can.

7 Just one last question now. In the paper early this
8 week, when you announced the list of where the sales are going to
9 be made, and it emphasized Safeway and Longs, and then yesterday
10 I read on and on, and it seemed to satisfy at least my concern
11 that you were not limiting it just to some large chain stores.

12 Now, my question is: Were the allocations made on the
13 basis of population and geographic areas, and big and small
14 operators? Is everyone getting a fair shake in being able to
15 sell these tickets?

16 MR. MICHALKO: Yes, Senator, absolutely. The first
17 thing I would like to tell you is that we tried to make sure that
18 everyone was treated equally. We received approximately 30,000
19 applications from perspective businesses to become licensed
20 lottery retailers. From that number we tried to pare it down to
21 a more workable number of approximately 20,000. The 20,000 were
22 decided upon on the basis of three basic factors, what we called
23 the three Ts: time, transactions and traffic. Meaning, the
24 hours the business is open, which obviously helps us; the number
25 of transactions that actually occur in the different retail
26 locations; and the traffic, the floor traffic and the
27 accessibility for traffic on the street.
28

1 We took each ZIP code within the state of California and
2 tried to get the people who had the highest volume of those three
3 factors within each ZIP code.

4 I think we've done a good job in getting a fair
5 representation of large and small stores. And in fact, just so
6 that the misconception is not further perpetrated here,
7 perpetuated here, the small stores outnumber the large chains
8 about two-to-one. We have far more Mom and Pop type stores and
9 small, single unit locations than we do the large chain stores.
10 So, everybody is going to be participating.

11 SENATOR MELLO: Is 7-11 a Mom and Pop, or is that a
12 large chain?

13 MR. MICHALKO: Well, 7-11 would be a large chain in my
14 opinion, even though there're franchises that we've licensed at
15 this point.

16 SENATOR MELLO: What about the minorities? Has there
17 been a fair allocation out to minorities?

18 MR. MICHALKO: There has. We did this on the basis, as
19 I suggested, of those factors that were listed on the
20 applications. To supplement that initial cut, if you will, we
21 have started a program that will have our sales force, our
22 district sales force representatives, as we call them, go out
23 into the field in each of the different geographical locations
24 and do a site evaluation of those retailers which have been
25 provisionally contracted.

26 We have not issued permanent contracts to any of those.
27 We will be doing an outreach program if we find that there's
28 under-representation by any particular minority group.

1 SENATOR MELLO: Thank you.

2 CHAIRMAN ROBERTI: Thank you.

3 Senator Petris.

4 SENATOR PETRIS: What is the standard for a small store?
5 Is there a minimum pedestrian count, traffic count? A hundred
6 customers a day, a thousand?

7 MR. MICHALKO: It's larger than a hundred. I don't have
8 the specific number in front of me that we used in the initial
9 determination.

10 Generally speaking, though, it would be hundreds of
11 transactions. Although what we tried to do, Senator, is make
12 sure that we don't select only those types of stores. That was
13 the basis for getting the initial group. Again, those were
14 selected with provisional contracts.

15 What we want to do is have representation from even
16 those areas that might not have that same type of volume to make
17 sure that they're distributed geographically.

18 SENATOR PETRIS: For example, nobody thinks of a shoe
19 store, I mean a shoe repair shop. I checked one out in my
20 district; they want to get into it. They have about a hundred
21 people a day come in. That seems rather small.

22 Would they be eligible under some kind of category? I
23 don't mean that particular one, but is that too far below?

24 MR. MICHALKO: Not necessarily. A lot of it depends on
25 the traffic that goes by the store as well, which is what I tried
26 to emphasize at the beginning. It's not necessarily just traffic
27 within the store.
28

1 SENATOR PETRIS: They could drop in --

2 MR. MICHALKO: Absolutely. If you're walking by and it
3 happens to be a good location where there's traffic on the
4 street, it might be a good location.

5 SENATOR PETRIS: Can you tell us a little bit more about
6 this Georgia problem? On the one the hand we've read that a
7 printing plant was being built here before the election even took
8 place. And now we see this Georgia problem and the judge's
9 order.

10 Number one, at the time that particular company was
11 selected, did they disclose that they had this obligation? Was
12 there any inquiry made into that?

13 MR. MICHALKO: The company did disclose the fact that
14 they had a contract with the Dittler Brothers Company, the
15 printing company in Georgia.

16 What I know about this is somewhat limited because we're
17 not an active participant, of course, in the lawsuit. But the
18 contract, as I understand it, from Scientific Games with Dittler
19 Brothers is an exclusive one.

20 SENATOR PETRIS: For the whole country.

21 MR. MICHALKO: The whole country, no matter where they
22 -- no matter where Scientific Games --

23 SENATOR PETRIS: Didn't we know that when we went into
24 this?

25 MR. MICHALKO: Yes, but as you know, we were in a
26 one-bidder situation in that particular instance. That was the
27 only company that submitted a responsive bid. And of course,
28

1 their contract with Dittler Brothers for the printing of the
2 tickets was something that was in place long before the
3 California lottery ever became a reality. That contract has been
4 in existence for a number of years.

5 SENATOR PETRIS: Yes, I understand that.

6 Who built the plant in California?

7 MR. MICHALKO: I don't know the answer to that. I
8 believe it was built by Scientific Games, but I don't know the
9 specific people who built it or anything like that.

10 SENATOR PETRIS: Are they continuing with the
11 construction of that?

12 MR. MICHALKO: My understanding is that the plant is
13 completed.

14 SENATOR PETRIS: Are they going to use it? They can't
15 use it under that order.

16 MR. MICHALKO: They're waiting to find out what the
17 final decision is in the lawsuit.

18 SENATOR PETRIS: Why was it a single bid thing? Was it
19 something in the initiative that was so tightly drawn that the
20 eligibility was narrowed down?

21 MR. MICHALKO: Yes, I think that's correct. The
22 initiative, as you know, has various disclosure requirements
23 requiring prospective suppliers of lottery equipment and tickets
24 to disclose things like work histories for all of the principals
25 in the business, and in addition, to disclose personal financial
26 and income tax records for a number of the principals in the
27 business.

1 At the time that we solicited proposals for the instant
2 tickets, the first contract, the only company that could meet
3 those disclosure requirements was Scientific Games.

4 SENATOR PETRIS: I don't understand that.

5 MR. MICHALKO: Well, they were basically the only one
6 that met the disclosure requirements that were set forth in the
7 bill. No other vendor was able to come forward and issue another
8 proposal to us, so we were, in essence, locked into that
9 particular contractor.

10 SENATOR PETRIS: How about walking me through that.

11 First of all, there was publicity during the campaign
12 that this is a precut deal, and these guys had it in the bag, and
13 they're going to get it.

14 I'm getting criticized as a state official for that. I
15 had nothing to do with the initiative; I voted against it. So,
16 you can weigh all my questions in that light.

17 Then we learned that a printing plant is under
18 construction before the election is even held. I guess they read
19 the polls.

20 Then, true to predictions, only one company shows up to
21 make the bid.

22 I don't understand why, if it's such a lucrative
23 contract, why the disclosure of a financial statement should be
24 the stumbling block.

25 Is everyone else in the business so shy that they don't
26 want us to have that information, or is it a matter of
27 mechanically putting together their statements? What's the
28 obstacle?

1 MR. MICHALKO: I think that's an excellent question. I
2 think there are a few factors that influenced --

3 SENATOR PETRIS: What does this company know that those
4 other people out there didn't know?

5 MR. MICHALKO: This much I can tell you of my knowledge
6 of the business.

7 There are currently three manufacturers of instant
8 tickets that have supplied United States jurisdictions in the
9 past decade. One is Scientific Games, the successful contractor
10 here in California.

11 Another is a company called Webcraft Games of New
12 Jersey. The parent company is Beatrice Foods, which is a huge
13 conglomerate, as you know.

14 Another company, the third company that has supplied
15 these tickets, is known as Response Graphics. Response Graphics
16 is a division of Moore Business Forms, another very large
17 multimillion dollar, perhaps multibillion dollar company.

18 There are very large mechanical obstacles for them to go
19 forth and compile work histories of all the principals in that
20 particular organization. You could be in a situation of having
21 to get that for hundreds and hundreds of principals in the
22 organization. So, there's a mechanical problem of doing that in
23 a timely fashion.

24 Secondly, for each of those people to go forth and
25 detail their work history from the time they were 18, it's a
26 little bit cumbersome for each member of those hundreds of people
27 in the organization to do so.

28

1 Then I think finally that --

2 SENATOR PETRIS: Whereas the proponent of the measure
3 has had them printed for years.

4 MR. MICHALKO: That is correct, because they had to do
5 that same disclosure when they were in working with the casino
6 industry in New Jersey. They had already had that in their
7 files, so to speak, and the other companies simply didn't.

8 And there was really a question of, first of all, the
9 timing, the ability to do this, and secondly, there might be an
10 issue of reluctance, if you will. It's really a question of the
11 benefit to the state of that information.

12 When you're dealing with these huge conglomerates, these
13 multibillion dollar businesses, it's a very cumbersome procedure.

14 SENATOR DOOLITTLE: May I just ask a question related to
15 that?

16 SENATOR PETRIS: Yes.

17 SENATOR DOOLITTLE: How much was the contract worth?

18 MR. MICHALKO: The contract was worth approximately \$40
19 million over the course.

20 SENATOR DOOLITTLE: What is the course?

21 MR. MICHALKO: Well, we have a contract with Scientific
22 Games to produce up to six games for us. As you know, the ticket
23 numbers per game may vary. We'll start out, for example, with
24 400 million in the first game and 300 million in the second. So,
25 their fee to us is for the printing and production of those
26 tickets and for a computer that will handle the inventory control
27 of the tickets and associated assistance to us in monitoring the
28 control of that system.

1 SENATOR DOOLITTLE: How long does it take to run through
2 the first six games?

3 MR. MICHALKO: A lot of that depends on how quickly
4 sales go here, but we anticipate that we can get through that
5 within a year.

6 SENATOR DOOLITTLE: So basically, assuming that comes to
7 pass, it's a \$40 million contract for one year; is that right?

8 MR. MICHALKO: Well, yes, it's for the supply of the
9 tickets and all the associated work that goes with it.

10 SENATOR DOOLITTLE: And presumably, once they have the
11 contract, they'll have sort of the inside track to renew the
12 contract. Is it renewable after the six games are up?

13 MR. MICHALKO: It is, but what we are trying to do is
14 ensure that we have maximum flexibility to look at other vendors,
15 provided they can meet the disclosure requirements.

16 One thing we're trying not to do, Senator, is be in a
17 position that some other states are in where the vendors have a
18 great deal of control over what occurs within the lottery. We
19 are trying to take steps to give us maximum flexibility to deal
20 with the best vendors for every product that we'll be getting.

21 SENATOR DOOLITTLE: I guess my concern is the same as
22 Senator Petris'. This has got to be the most artful job that's
23 ever been pulled off in California. This is amazing!

24 With a \$40 million contract, it seems incredible to me
25 that some of those others wouldn't have figured out a way to get
26 the information.

27

28

1 I wish I understood more about the business, and then
2 I'd have, I guess, a better appreciation.

3 SENATOR PETRIS: Continuing along that, who are the
4 corporate relatives of the contractor here? Do they have
5 corporate parents too?

6 MR. MICHALKO: Of Scientific Games?

7 SENATOR PETRIS: Yes.

8 MR. MICHALKO: Yes, the parent company for Scientific
9 Games is Bally Manufacturing of Illinois.

10 SENATOR PETRIS: Is that a big outfit?

11 MR. MICHALKO: It's a very large outfit.

12 SENATOR PETRIS: How many statements did they have to
13 file?

14 MR. MICHALKO: They filed a good number of them.

15 SENATOR PETRIS: Several hundred?

16 MR. MICHALKO: I would believe so, yes, sir.

17 SENATOR PETRIS: Are there other corporate relatives
18 that have to be included?

19 MR. MICHALKO: They would have to disclose all their
20 subcontractors as well. In this case, I don't believe that they
21 have any particular subcontractors other than the company that
22 supplies the central computer for them. Basically they have to
23 divulge the information for Scientific Games and the parent
24 company, Bally Manufacturing.

25 SENATOR PETRIS: And that includes the manufacturing of
26 machines that they do?

27 MR. MICHALKO: Yes, the tickets themselves and --
28

1 SENATOR PETRIS: No, the slot machines. Don't they make
2 slot machines?

3 MR. MICHALKO: Yes, they do.

4 SENATOR PETRIS: Isn't that part that has to be
5 included?

6 MR. MICHALKO: Yes, it does. That's a division of Bally
7 Manufacturing; that is correct.

8 SENATOR PETRIS: These are all those preprinted
9 statements they've had for a long time?

10 MR. MICHALKO: I believe that is correct.

11 SENATOR PETRIS: Let me see about one other aspect of
12 this.

13 I saw an article in one of the national newspapers this
14 week indicating problems are starting to creep into some of the
15 other states. The underworld is working very hard to crack these
16 systems.

17 As I remember, the history of the lottery in the United
18 States hasn't been too happy. You know, following the Civil War
19 -- I guess you know the history because you're in that field --
20 but they had to send several high ranking state officials from
21 several of the Southern states to prison because they were
22 subverted by the underworld at that time. And then in the first
23 New York lottery, they figured out a way to run counterfeit
24 tickets, and they collected all the money and didn't give any
25 prizes. So, that killed the first New York lottery.

26 What's happening now that we have to watch for that are
27 creeping up in the other states? I guess what I'm really asking

1 is, are you keeping an eye from the security standpoint on
2 problems surfacing in states that have been at it longer? And
3 what kind of things are we looking for that you can talk about?

4 You may not want to reveal all you know, and I can
5 appreciate that.

6 MR. MICHALKO: First of all, I can't reveal all I know
7 about it, but I can tell you this much. We are definitely
8 keeping a very keen eye on what's happening in other states.

9 I can tell you from my experience, having studied the
10 industry for now nine years, that problems have occurred in other
11 states. There's nothing, first of all, though, to indicate that
12 organized crime has gotten a foothold into the industry. That
13 has not occurred.

14 We have, from the California Lottery's standpoint, been
15 very concerned about making sure that we have the proper security
16 procedures in place. We have a security staff that I think is
17 second to none in the lottery industry. We're getting top
18 qualified professionals. They are working in close conjunction
19 with the security divisions of other state lotteries monitoring
20 activities, and I really believe that the state of the art today,
21 so you know in terms of the tickets, is such that it would be
22 very difficult to compromise them; although, I will tell you that
23 it's certain to be attempted here in California. That is why
24 we've taken steps to get the best security people on board that
25 we can possibly have. It's a very high priority as far as I'm
26 concerned.

27 SENATOR PETRIS: Thank you.

1 CHAIRMAN ROBERTI: Senator Doolittle.

2 SENATOR DOOLITTLE: What's the nature of the promotion
3 going to be on the lottery? In other words, are we going to be
4 expecting to see television commercials, listen to radio
5 commercials?

6 MR. MICHALKO: Senator, the answer to your question is:
7 Yes, we will have advertising for the lottery. My personal view
8 of the type of advertising that I would like to see is that we
9 have to advertise for purposes of educating the public that we
10 have a product, telling them how the lottery is played.

11 What you will not see here in California is anything
12 that would be offensive, or be associated with, to coin a phrase,
13 a Madison Avenue type approach, a hard sell.

14 What we'll do is advertise in a very tasteful manner
15 what the product is, how to play, and where it's available.

16 SENATOR DOOLITTLE: I saw an ad in Washington. It was
17 sort of like a Pepsi ad, with girls in bikinis, and young people
18 all having fun at the Lotto.

19 Is that deemed to be in good taste?

20 MR. MICHALKO: In my opinion, it is not. That is not
21 the type of advertising that you're likely to see here in
22 California.

23 CHAIRMAN ROBERTI: Any further questions?

24 SENATOR CRAVEN: I'd be happy to move Mr. Michalko's
25 nomination to the Floor.

26 CHAIRMAN ROBERTI: Senator Craven moves Mr. Michael
27 Michalko's confirmation be recommended to the Floor.

28

1 Is there any opposition? Yes.

2 FROM THE AUDIENCE: Is this about the state lottery?

3 CHAIRMAN ROBERTI: Yes.

4 FROM THE AUDIENCE: When will it take effect?

5 CHAIRMAN ROBERTI: Well, it's a question from the
6 public, and I think that's the question everybody wants to know
7 anyway, so there you go.

8 MR. MICHALKO: A fair question.

9 We'll be selling tickets either in the last week of
10 September or the first week of October.

11 FROM THE AUDIENCE: Where can --

12 CHAIRMAN ROBERTI: Come on forward.

13 FROM THE AUDIENCE: No.

14 CHAIRMAN ROBERTI: You can't ask questions from the
15 audience like that.

16 Secretary will call the roll.

17 SECRETARY WEBB: Senator Doolittle.

18 SENATOR DOOLITTLE: Aye.

19 SECRETARY WEBB: Senator Mello. Senator Petris.

20 SENATOR PETRIS: Aye.

21 SECRETARY WEBB: Senator Craven.

22 SENATOR CRAVEN: Aye.

23 SECRETARY WEBB: Senator Roberti.

24 CHAIRMAN ROBERTI: Aye.

25 The vote is four to nothing; confirmation is recommended
26 to the Floor.

27 MR. MICHALKO: Thank you, Senators.

28

1 CHAIRMAN ROBERTI: The next appointment is Mr. John
2 Price, Member of the California State Lottery Commission.

3 MR. PRICE: Thank you, Senator. For the record, I'm
4 John M. Price.

5 CHAIRMAN ROBERTI: Mr. Price, we'll ask you the same
6 question we asked the other Governor's Appointees: Why you feel
7 you're qualified to assume this position.

8 MR. PRICE: Well, as you probably know, Senator, there
9 is a provision in Prop. 37 that requires the Governor to appoint
10 someone with five years law enforcement experience.

11 As you may know, I was the District Attorney of
12 Sacramento County for 20 years, and after the proposition passed,
13 I wrote the Governor and told him I was available.

14 CHAIRMAN ROBERTI: Very good, and he appointed you.

15 Any questions?

16 SENATOR DOOLITTLE: I move confirmation.

17 CHAIRMAN ROBERTI: Senator Doolittle moves Mr. Price's
18 confirmation be recommended to the Floor.

19 Any questions?

20 We do know all about you, and we think that you're very
21 qualified to assume this position and think the Commission is
22 well served by your presence.

23 Any opposition?

24 (Thereupon the following affidavit is
25 incorporated into the record of this
26 proceeding.)
27
28

1 "I, Eloise Motz, in lieu of my pre-
2 sence at the confirmation hearing on
3 nominee Lottery Commissioner John Price,
4 freely submit this statement under pen-
5 alty of perjury, as my emphatic objection
6 to his confirmation:

7 "California State Penal Code,
8 Section 118: Any person who, having
9 taken oath that he will testify, states
10 as true any material which he knows to
11 be false, is guilty of perjury. Section
12 126: Perjury is punishable by imprisonment
13 in the state prison.

14 "This month, I was hospitalized for
15 the second time this year, for ten days.
16 Due to my heart's condition, I am under
17 doctor's order to have complete rest for
18 two hours, mornings and two hours, after-
19 noons, during which time I am not to even
20 answer my telephone. I had eagerly looked
21 forward to this hearing so I could confront
22 John Price. When God, for His own reasons,
23 closes one door he always opens another
24 wider door.

25 "Why do I, an ordinary citizen from
26 Main Street, U.S.A., have so much evidence
27 against John Price? When I was only forty-
28

1 one years of age, I followed routine real
2 estate advice of my own attorney, in my
3 home state of Ohio. The direct result was
4 arrest, the beginning of a thirty year
5 tragedy, consisting of heartbreak, turmoil
6 and unbelievable repercussions.

7 "I have letters signed by Attorney
8 General John Van de Kamp, Senator John
9 Doolittle and others, showing evidence I
10 submitted was to be investigated. I was
11 told Governor Deukmejian was to be told
12 he had a major problem with John Price,
13 because of my evidence. Did you ever know
14 of any investigation which did not include
15 contacting the principal? Not once was I
16 ever asked, nor given any opportunity, to
17 relate the true facts. If the so-called
18 investigation was conducted by checking
19 courthouse records, only, it was an exer-
20 cise in futility. The chief and major
21 complaint includes falsified records and
22 falsified evidence. John Price has com-
23 mitted felony after felony, any one of
24 which should send him to prison. For
25 example, he sent a false criminal report
26 to Ohio, apparently in an effort to prevent
27 my receiving a settlement from the state
28 of Ohio.

1 "I am now seventy-three years of age
2 and a widow. My fine husband of forty-four
3 years died, in 1977, of brain cancer. The
4 surgeon told me it could have been brought
5 on by stress, in his opinion. I intend to
6 fight for what is rightly mine and for my
7 country until my last breath. Corruption
8 is a cancer, too, which affects every one
9 of us.

10 "I hereby demand a postponement on
11 the confirmation of John Price until a
12 thorough and intensive investigation is
13 conducted with my participation. I am
14 able to have appointments in my apartment
15 and I am able to give depositions; I have
16 detailed evidence of the heinous crimes
17 committed by John Price. If he is con-
18 firmed, the public should be concerned
19 about the existence of law in California.
20 The hearings would be a farce, only window
21 dressing to make the Lottery look untainted."

22 CHAIRMAN ROBERTI: Secretary will call the roll.

23 SECRETARY WEBB: Senator Doolittle.

24 SENATOR DOOLITTLE: Aye.

25 SECRETARY WEBB: Senator Mello. Senator Petris.

26 SENATOR PETRIS: Aye.

27 SECRETARY WEBB: Senator Craven. Senator Roberti.

28

1 CHAIRMAN ROBERTI: Aye.

2 The vote is three to nothing; confirmation is
3 recommended to the Floor.

4 MR. PRICE: Thank you. This is truly Good Samaritan
5 Week.

6 (Laughter.)

7 CHAIRMAN ROBERTI: Next is Mr. Howard Varner, Member of
8 the California State Lottery Commission.

9 Mr. Varner, we'll ask you the same question we ask the
10 other Governor's Appointees, and that's why you feel you're
11 qualified to assume this position.

12 MR. VARNER: I feel the lottery is a business, a big
13 business. I was affiliated with a company called Host
14 International from 1949 until my retirement last June 30th, 1984.

15 I was president and chairman of this company. It was a
16 publicly held company with over 12,000 employees, operating in
17 over 30 states. We had sales in excess of \$400 million.

18 I feel the experience I gained in operating this company
19 as the chief executive officer in marketing and other facets, and
20 being accountable for the profits and loss makes it possible for
21 me to contribute to the successful operation of the lottery.

22 CHAIRMAN ROBERTI: Thank you very much, Mr. Varner.

23 Are there any questions of Mr. Varner? Is there any
24 opposition?

25 SENATOR DOOLITTLE: I move.

26 CHAIRMAN ROBERTI: Senator Doolittle moves Mr. Varner's
27 confirmation be recommended to the Floor.

28

1 Secretary will call the roll.

2 SECRETARY WEBB: Senator Doolittle.

3 SENATOR DOOLITTLE: Aye.

4 SECRETARY WEBB: Senator Mello. Senator Petris.

5 SENATOR PETRIS: Aye.

6 SECRETARY WEBB: Senator Craven.

7 SENATOR CRAVEN: Aye.

8 SECRETARY WEBB: Senator Roberti.

9 CHAIRMAN ROBERTI: Aye.

10 The vote is four to nothing; confirmation is recommended
11 to the Floor.

12 Congratulations.

13 (Thereupon this portion of the Senate
14 Rules Committee hearing was terminated
15 at approximately 4:10 P.M.)

16 --oo0oo--
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CERTIFICATE OF SHORTHAND REPORTER


I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

29th day of August, 1985.


EVELYN MIZAK
Shorthand Reporter

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1 HEARING

2 SENATE RULES COMMITTEE

3 STATE OF CALIFORNIA

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10 STATE CAPITOL

11 ROOM 3191

12 SACRAMENTO, CALIFORNIA

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16 WEDNESDAY, SEPTEMBER 11, 1985

17 11:10 P.M.

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25 Reported by:

26 Evelyn Mizak
27 Shorthand Reporter
28

APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice-Chairman

SENATOR JOHN DOOLITTLE

SENATOR MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

SARAH M. FLORES, Member,
Board of Behavioral Science Examiners

WILLIAM J. JOHNSTON, Member,
California State Lottery Commission

LAVERTA MONTGOMERY, Member,
California State Lottery Commission

KENNARD W. WEBSTER, Member,
California State Lottery Commission

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P R O C E E D I N G S

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CHAIRMAN ROBERTI: The first item on the agenda is the Governor's Appointees appearing today, Sarah M. Flores, Member of the Board of Behavioral Science Examiners.

Ms. Flores, we'll ask you what we ask all the Governor's Appointees, and that is why you feel you're qualified to assume this position.

MS. FLORES: I feel I'm qualified because I have an interest in the field of behavioral science. I feel that in my job, I deal with the psychology of communities, and basically this is individuals, and communities are created of individuals. So, it's an interest that I have as a public member. I'm not in the field, but I do have an interest.

CHAIRMAN ROBERTI: Currently your position is what? For the record, you are the administrative officer to the supervisor?

SENATOR CRAVEN: Assistant Chief Deputy.

MS. FLORES: Yes, Assistant Chief Deputy to the supervisor.

SENATOR CRAVEN: We could forgive that, couldn't we?

CHAIRMAN ROBERTI: Is there any opposition in the audience? Seeing none, are there any questions?

SENATOR PETRIS: Yes.

CHAIRMAN ROBERTI: Senator Petris.

SENATOR PETRIS: There have been a lot of complaints brought to our attention on the part of some applicants or licensees. I guess you know there's a big dispute that's been going on.

1 The Board has been charged with abruptly changing the
2 standards and the rules in the middle of the road after people
3 have received their degrees and pursued, you know, several years
4 of study, and in some cases, passed the written exam but have
5 been held up at the oral exam level.

6 I have a note here that says:

7 "Of approximately a thousand people
8 scheduled to take the last exam, 518 were
9 notified that their results would be
10 withheld until the task force could
11 determine the appropriateness of their
12 academic credentials."

13 Now, these academic credentials involve programs that
14 have long been recognized at Cal State Northridge, Loyola
15 Marymount, U.C.L.A., John F. Kennedy. Meanwhile, hundreds of
16 people who took the exam are waiting after a long delay of many
17 months for the results.

18 Can you tell me what this is all about?

19 MS. FLORES: Well, in the first place, there hasn't been
20 any changes enacted by the Board at all. All that we're doing is
21 following the law as set by the Legislature and the regulations.

22 Basically what has happened was that two applicants were
23 brought to the attention of the Board in May, and we requested an
24 audit. And we discovered from that audit that many of the
25 colleges were not complying with the ten-course contents as
26 specified in the law. There was no changes; it was just to
27 clarify whether the colleges were in compliance or not.

1 We have reviewed out of the 512 about 300 applications
2 which will receive notification concerning their approval, and
3 which will leave about 200 cases that is questionable because of
4 the ten-course content, which are part of the regulations, and
5 also because of the law which states specifically what we are to
6 address as it relates to licensure.

7 SENATOR PETRIS: Do you have a monitoring authority over
8 the universities and colleges that are giving these courses?

9 MS. FLORES: No, we only have the law that you as a
10 Legislator give to us to follow in order to get the job done for
11 you, and that's all that we're following.

12 SENATOR PETRIS: Now, if you find there's a school that
13 doesn't give the proper courses, don't you write to that school
14 and tell them that you have discovered this problem and the
15 school ought to do something about it?

16 I've heard of other cases prior to these where the
17 courses that were offered not only met the state standards, but
18 were in excess of the state standards and they still have a
19 delay.

20 MS. FLORES: Well, I think most of the colleges that are
21 in excess of the state standards have been reviewed, and those
22 applications have been accepted.

23 SENATOR PETRIS: But the way I learned about it was,
24 students came to me and said that they had passed the course,
25 they got their degree, and now they're not permitted to move
26 forward.

27

28

1 It has a bad impact on their careers if they're waiting
2 for months to find out whether they're going to be able to
3 practice or not.

4 MS. FLORES: The problem is not -- the problem is that
5 we have an obligation to the law as it now exists. The task
6 force is going to make some recommendations for remedial
7 legislation in the near future, and we would like your support in
8 that area.

9 We can't -- I, as a new member, cannot feel in good
10 conscience that I should make allowances if the law is in place.
11 If you change the law, then that's something else.

12 SENATOR PETRIS: Who makes up the exam?

13 MS. FLORES: I don't know.

14 SENATOR PETRIS: Isn't that the Board?

15 MS. FLORES: I assume so, but I really don't know.

16 As a new member, I'm not familiar with who makes the
17 exam. I'm sure there is input from the Board, but I'm also sure
18 that there's input from professionals that deal with that kind of
19 licensure.

20 SENATOR PETRIS: That are out in the field?

21 MS. FLORES: That are in the field, but I can't --

22 SENATOR PETRIS: Now, if you're attacking the courses
23 offered at -- let's pick any school -- U.C.L.A., if you're
24 attacking the courses there because they're inadequate, it seems
25 to me if there are certain types and numbers of courses required,
26 and the students from that school are not given those courses,
27 they're not going to pass the test; are they? So, why not let
28

1 them take the exam instead of telling them in advance that
2 whether you pass the exam or not, you're not going to get your
3 credential.

4 MS. FLORES: I think that you'll have to be clear that
5 we're not attacking courses and we're not attacking colleges.
6 Those colleges have courses and degrees; of that there's not a
7 question.

8 The problem is that within schools there may be four or
9 five different degrees, and all of those degrees are trying to
10 apply for a license. Now, some of those degrees are applicable,
11 but there are some of them that are not, and those are the ones
12 that are in question. The ones that follow the law and the
13 regulations we have no problem with.

14 The ones that we had questions with, we needed to have
15 the college come to us and explain the politics of the college
16 and why they had the differences in the catalog, and they had to
17 explain that to us.

18 We have no problems with the colleges. We cannot
19 dictate to the colleges what to do. All that we can do is follow
20 the law that the Legislature has given to us.

21 And as a member of the Board, my responsibility is to
22 make sure that that's what's going down, not to determine whether
23 a college will allow a fine arts student to become a family
24 counselor or receive a license. I can't determine that. I could
25 only determine what's in the law, and that's going to give me the
26 decision to allow a license or not.

27

28

1 SENATOR PETRIS: What is the task force doing? What is
2 their mission?

3 MS. FLORES: Our mission is to review the applications
4 as they exist and to determine which of those applications would
5 be able to get licensure, and then those that we have questions,
6 we have requested the schools to come to see us to explain what
7 are the differences and what the problems may be.

8 SENATOR PETRIS: And how does that affect the individual
9 student? Does that hold up the right to take the exam?

10 MS. FLORES: Well --

11 SENATOR PETRIS: Does it disqualify them entirely? How
12 does that impact the individuals that have gone through school
13 being told that they are eligible to apply for this particular
14 license only to find when they get to the exam time that they're
15 not eligible?

16 MS. FLORES: Well, I think that the universities have an
17 obligation to know the letter of the law and the regulations, and
18 that's not the responsibility of the Board.

19 The responsibility of the Board is to make sure that
20 those people accepting the license, are going through the license
21 procedures, are those people that are going to be good for the
22 consumer and the constituent that the Legislature represents.

23 SENATOR PETRIS: Now, is there any preliminary contact
24 between the Board and the student before graduation or even at
25 the very beginning, let's say, first year, freshman year?

26 MS. FLORES: I don't understand the question?
27
28

1 SENATOR PETRIS: All right, let me put it this way.

2 Does the Board send out any information to prospective
3 applicants, to students, indicating what the requirements are in
4 order to qualify for the examination?

5 MS. FLORES: I don't know that. I really don't know. I
6 don't know that procedure.

7 I just know that the applications are reviewed by the
8 staff, and when we requested an audit, we found that there were
9 some discrepancies and we needed clarification. Many of the
10 colleges that came before the task force adequately supplied the
11 information. There are a very few colleges that have not
12 supplied the information that we need in order to make the
13 decisions that are necessary.

14 SENATOR PETRIS: Of those that came forward and supplied
15 the information, have they been cleared? Are they okay now?

16 MS. FLORES: Many of them, yes. There is going to be a
17 Board meeting at which time, at a Board meeting, we will make the
18 determination and then the notifications will go out immediately
19 thereafter.

20 SENATOR PETRIS: The schools in the meantime have been
21 given an opportunity to present their explanation?

22 MS. FLORES: We have asked the schools to explain why
23 there is so much difference between the various accreditation of
24 students with various degree titles and to explain how they feel
25 that licensure of this kind is going to be good for the
26 constituent or the consumer if they don't meet the ten-course
27 requirement and the law as specified by the Legislature.
28

1 SENATOR PETRIS: How many schools are there that train
2 people for licensing in your department?

3 MS. FLORES: I really don't know that; there's several.

4 SENATOR PETRIS: I notice the task force has rejected 13
5 of the schools and said they won't take any of their graduates.
6 How many more are there beyond the 13?

7 MS. FLORES: I don't think that we have rejected any
8 school at this point. I think we're at the point of reviewing.

9 We have made recommendations in terms of the fact that
10 some of the students from some of the schools need to come to
11 talk to us. There hasn't been any denials at this point that I
12 know of.

13 We still have 20 percent of the applications to go over,
14 so I don't know that there's been any rejections.

15 SENATOR PETRIS: The report I have is that the task
16 force has recommended to the Board, I don't know whether the
17 Board has taken action, but the task force has recommended
18 rejections of 13 schools.

19 MS. FLORES: Well, there hasn't been any action yet that
20 I know of, so, the task force has had the Attorney General in
21 advising us every step of the way as it relates to our actions.
22 So, we have had one thing in mind, and that's to comply with the
23 law and the Legislature's regulations as set forth in that law.

24 SENATOR PETRIS: Do you think that's the biggest problem
25 that you have now that the Board is facing, or are there other
26 problems?

27

28

1 MS. FLORES: I think we're just taking one step at a
2 time, each of the problems that arise. At this time, this is the
3 major problem with that Board with that particular licensure.

4 SENATOR PETRIS: Now, how did all this come to your
5 attention? Were there complaints from the public that people
6 were in that field that didn't know what they were doing, maybe
7 hurting people?

8 MS. FLORES: No, we had two applicants that were brought
9 to the Board's attention, and that was in May. And at that time,
10 we asked for an audit to find if there were other problems that
11 were similar. And then, at that time it was discovered there
12 were more.

13 SENATOR PETRIS: Were both of those two from the same
14 school?

15 MS. FLORES: I don't recall.

16 SENATOR PETRIS: Isn't there an internship requirement
17 before getting a license of 3,000 hours?

18 MS. FLORES: Yes, there is.

19 SENATOR PETRIS: And when a candidate applies to take
20 the exam, doesn't the candidate have to show documentation that
21 they've had the 3,000 hours with a satisfactory passing from the
22 professional with whom they've been working?

23 MS. FLORES: That's correct.

24 SENATOR PETRIS: Now, wouldn't that make up for the
25 deficiency if they're successful in their internship?

26 MS. FLORES: Not in all cases, no. The problem is that
27 we need to look at some of the schools that do not comply, and
28

1 those schools that do not comply grossly do not comply. And
2 those decisions have to come to a Board level, and those
3 decisions have not been made.

4 Basically the task force is just making recommendations
5 and calling the attention to the Board of some of the problems
6 that exist. And the internship problem will be something that
7 will be addressed in futurity.

8 We have a problem where we had a director that in good
9 faith accepted the certification from the colleges. Upon review,
10 some of the colleges have not complied, and it's eroded in time
11 so that some of the accredited classes do not fit the letter of
12 the law or the regulations. So what we're trying to do is to get
13 some remedial legislation that we will propose to you, and we'd
14 like your support in order to correct some of the problems that
15 exist in order to make things much more smoother in the future.

16 SENATOR PETRIS: Let me just take you through one case.
17 Here's a letter from a person.

18 First of all, let me ask you about Pacific Oaks College
19 in Pasadena. I understand that's a fully accredited school. Is
20 that one on the trouble list?

21 MS. FLORES: I don't know.

22 SENATOR PETRIS: The letter says:

23 "In April of 1984, I completed my course
24 of study at Pacific Oaks College in
25 Pasadena to become a marriage, family and
26 child counselor."
27
28

1 That's not one on the periphery. I noted there's dance therapy
2 and these other things.

3 "Pacific Oaks is a fully accredited
4 school. My diploma reads that I have a
5 Master of Arts in human development with
6 a specialization in marriage, family and
7 child counseling.

8 "During my three years at the
9 school, I completed all of the required
10 courses enumerated by the Board of
11 Behavioral Science in Section 1830 of the
12 Code. After graduation I obtained an
13 internship number from the Board and
14 completed the required 3,000 supervised
15 hours of training."

16 I guess that's internship.

17 "I sat for the written exam to become a
18 licensed MFCC on April 27, 1985. In May,
19 I was notified by the Board that I had
20 passed the written portion of the exam
21 and would be allowed to take the oral
22 portion in June.

23 "After completing this latter phase
24 of the exam I was notified by the Board
25 that my license and the license of
26 several hundred other applicants were
27 being held up."
28

1 Now, it seems to me that there's a problem here. The
2 problem is chopping off a person after all of this. The Board
3 gives the number for internship, the internship is under a
4 Board-supervised or monitored program. This person claims -- I
5 don't know anything about the courses -- but this person claims
6 that all the prescribed courses prescribed by the Board were
7 taken, satisfactorily completed, the examination was passed, both
8 the written and the oral, and all of a sudden somebody says:
9 Well, we're not letting you go further than this; we're checking
10 out your academic qualifications.

11 You know, normally when something like this happens, if
12 we want to change the rules we make them prospective, but we
13 don't turn back people that have been led to believe, both by the
14 state and the school, that everything will be all right if these
15 conditions are satisfied.

16 So, that's what troubles me. It seems that several
17 hundred others are in the same boat.

18 MS. FLORES: Well, number one, we haven't changed
19 anything. The rules and regulations exist as the Legislature has
20 passed them.

21 The schools vary according to their location as to their
22 ten-course content and the classes that they give, so some
23 schools have been revised.

24 Perhaps that student has been accepted. I don't know in
25 that particular case. But we have reviewed them.

26 We haven't changed anything, and I'd like to emphasize
27 that.
28

1 SENATOR PETRIS: The letter's dated September 2nd, and
2 it hasn't changed as of that time.

3 It seems to me there is a change in that the action
4 makes it retroactive, affecting people that have already
5 completed the course.

6 I think if you'd found some deficiencies through your
7 study and you made an announcement, and you told the university:
8 Beginning such and such a date, we're not accepting any of your
9 students unless you comply with these sections of the Code.
10 Then, everybody'd be on notice and they could do it. But to wait
11 until they've gone through the whole thing and then pounce on
12 them seems to me to be unfair.

13 MS. FLORES: I'm a new member of the Board, so I don't
14 know a lot of the past history. And when I came on the Board, I
15 inherited this problem as one of the major problems that existed.

16 I became a part of that task force, and I felt that my
17 responsibility was to the -- as I read the consumer guidelines
18 for boards and commissioners -- that I should follow the letter
19 of the law as it related to the Legislature and the regulations.

20 If there was anything that there was a question, I
21 should have an answer to that. And I think it's important for
22 you to realize that we will be asking for some remedial
23 legislation that will address the issues that you've just
24 specified.

25 I don't think the problem is as big as probably you feel
26 it may be, and I think that there's been a lot of sensitivity and
27 caring. I think in the long run the percentage of those
28

1 applicants that are not being accepted will be very small. And
2 with your assistance, that legislation will change a lot of
3 things that create a lot of the -- changes that will take place.
4 Then the changes will take place. Now there has been none.

5 SENATOR PETRIS: I think you have a good attitude except
6 for what puzzles me is that first you're emphasizing you didn't
7 make any changes; you're just carrying out the law.

8 Now you're telling us that you need a change in the law
9 in order to accomplish your purpose.

10 Those two statements are contradictory.

11 MS. FLORES: I disagree.

12 SENATOR PETRIS: When will the task force report be made
13 public or be completed?

14 MS. FLORES: We are going to go to have a Board meeting
15 on Friday, where we'll be making some decisions. But we will
16 bring in some suggested remedial legislation that will help the
17 Board do a better job, but we need to discuss those at a future
18 date. We don't have that ready for you at this point.

19 SENATOR PETRIS: How long have you been on the Board?

20 MS. FLORES: Since May.

21 SENATOR PETRIS: Of this year?

22 MS. FLORES: Of this year.

23 SENATOR PETRIS: Mr. Chairman, I don't have any
24 questions for the time being.

25 CHAIRMAN ROBERTI: Senator Mello.

26 SENATOR MELLO: Following Senator Petris' questions, and
27 I know the lateness of the hour, but I see there's some 21
28

1 letters of opposition, and I haven't had a chance to look them
2 over, but it appears that there's a lot of opposition to your
3 confirmation.

4 I see you were officially appointed on June 2nd. I
5 don't know whether or not the Committee would want to put it over
6 until our next meeting to give us a chance to look into this in
7 more detail, or we could prolong the hearing for another half
8 hour, hour, or two.

9 SENATOR PETRIS: I would concur, Mr. Chairman.

10 CHAIRMAN ROBERTI: I think we should take the hearing up
11 right now. I think there's been a lot of notice.

12 SENATOR CRAVEN: I would speak to the continuance of the
13 hearing, Mr. Chairman.

14 I think Senator Petris, who spent quite a bit of time in
15 the questioning of this lady, delved into the matter.

16 I don't know how you people get these complaints. I
17 never get a compliant. Until I read the dossier on this lady I
18 knew nothing about the situation.

19 I have a couple of things that I would like to ask if I
20 may.

21 How often do you meet with this organization? Do you
22 meet three times a week, or twice a week?

23 MS. FLORES: The Board meetings are about once a month.

24 SENATOR CRAVEN: Are you responsible for the
25 administrative morass that has been encountered by this
26 organization?

27 MS. FLORES: No.
28

1 SENATOR CRAVEN: You don't administer?

2 MS. FLORES: No.

3 SENATOR CRAVEN: You only sit as a member of the Board?

4 MS. FLORES: Right.

5 SENATOR CRAVEN: Do you have an executive officer?

6 MS. FLORES: Yes.

7 SENATOR CRAVEN: What does he do or she do?

8 MS. FLORES: She administers the running of the --

9 SENATOR CRAVEN: So the day-to-day machinery of this
10 operation is really vested in a paid executive?

11 MS. FLORES: Correct.

12 SENATOR CRAVEN: I see. You probably make a lot of
13 money in this job, don't you?

14 MS. FLORES: No, not very much.

15 SENATOR CRAVEN: It's like \$50 a meeting?

16 MS. FLORES: That's correct.

17 SENATOR CRAVEN: Well then, I don't know really why we
18 should be trying to hang the yoke on this young woman. It
19 appears to me that the colleges and/or universities who have
20 granted degrees, which they are certainly capable of doing, that
21 is somewhat irrelevant to the law. The law is specific, and this
22 lady has said that what she has tried to do, and what the Board
23 presumably has tried to do, is uphold the law.

24 The fact that U.C.L.A. or Cal Northridge says you are
25 now a master in whatever it may be is fine, and that degree has
26 great quality, but not necessarily in reference to what is
27 required by virtue of this examining group.

28

1 I don't find that very difficult to understand, but the
2 one thing that I don't understand is how you could attribute a
3 problem to this lady here, who in my judgment has had about as
4 much to do with that as I have, which is nothing.

5 I don't mean to be either flip or facetious. I mean it
6 very sincerely. I think her response has been very frank, and I
7 think she has in fact implored the members of this Committee as
8 well as the Legislature to help allay or arrest the problem that
9 obviously has been encountered, which Senator Petris has
10 recounted for us. And I don't in any way dismiss that, but I
11 think that that can be solved, and I think she wants to be a part
12 to solving it.

13 I would therefore move her confirmation to the Floor.

14 CHAIRMAN ROBERTI: Senator Craven moves confirmation to
15 the Floor.

16 SENATOR MELLO: Substitute motion.

17 CHAIRMAN ROBERTI: Senator Mello has a substitute
18 motion.

19 SENATOR MELLO: That the hearing be continued until our
20 next hearing or the hearing set in January.

21 CHAIRMAN ROBERTI: Senator Mello moves that the
22 confirmation be reset for the first meeting in January.

23 SENATOR CRAVEN: On the motion.

24 SENATOR PETRIS: May I speak to the motion?

25 CHAIRMAN ROBERTI: On the substitute motion, Senator
26 Petris.

27

28

1 SENATOR PETRIS: I'm not trying to blame this lady for
2 anything. I didn't see any information on this until ten minutes
3 ago. The letter from which I'm quoting does not ask us to oppose
4 her nomination. It asks for information and an explanation.

5 I think we're entitled to that. Once a person is
6 confirmed, we can go whistle for the information. Now is the
7 time to get it.

8 She hasn't been on long enough. A lot of my questions
9 she couldn't answer, and she's very frank to admit it. She
10 doesn't know who makes up the exams, yet the whole gist of this
11 thing is the exams. I think she ought to know that.

12 Perhaps if I were in her shoes I wouldn't know it
13 either. It's not a criticism, it's just a matter of fact.

14 I don't think there's anything to be lost to anybody.
15 It'll give the lady more time to find out what's going on there,
16 more time to make recommendations for improvement, and give us
17 more time to find out what the picture is. And I think going
18 over to January is not going to be harmful at all.

19 I'm not here just to oppose you. That's not my purpose.
20 I have received these complaints, and they are leveled at the
21 Board, not at you individually. You just happen to be the one
22 from the Board that's here.

23 SENATOR CRAVEN: May I speak to the motion?

24 CHAIRMAN ROBERTI: Yes, Senator Craven.

25 SENATOR CRAVEN: I would respectfully disagree with
26 Senator Petris. I don't think the gist of it is the exam. I
27 think the gist of it is a qualification to assume the role that
28 they seek.

1 This lady, obviously, as so many other persons here
2 tonight, has probably waited for many, many, many hours today,
3 and I don't know.

4 Frankly, we have a list here of concerns, is the way
5 it's listed here, from a variety of people, all of whom probably
6 have the same basic problem that Senator Petris has recounted. I
7 don't know that putting the matter over is really going to make
8 an awful lot of difference. Maybe we can add some names to the
9 list; I doubt seriously if we can remove any.

10 I just don't know what we're accomplishing, unless in a
11 sort of a masochistic sense we want to go through this exercise
12 some more, which I don't, frankly.

13 CHAIRMAN ROBERTI: On the point, I've read excerpts of
14 most of the letters, and I tend to think that the problem which
15 the people who have written the letters have, and I certainly
16 share this concern, is not over the Board's interpretation of the
17 regulations. They don't seem to quarrel with the Board's
18 interpretation of the regulations; the quarrel is that the
19 Board's interpretation does not correspond to past actions by the
20 Board.

21 But I do think that if they want to hold up a
22 confirmation, they have to show that there is a disagreement with
23 the regulations and the implementation of the regulations, not
24 that somehow it's not the same as what actions the Board in the
25 past has taken.

26 SENATOR CRAVEN: Well, if people want to object,
27 certainly that's their right to do so. But why they would object
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1 to this lady, who has served all of four months as a member of
2 this Board for basically what constitutes sins from the past, if
3 they are existent, and they want to charge her, in effect, by
4 virtue of what they're doing here as being responsible for the
5 peccadillos that are enumerated.

6 I think a good administrator could rectify this very,
7 very quickly.

8 CHAIRMAN ROBERTI: There is a substitute motion by
9 Senator Mello before us.

10 SENATOR MELLO: May I comment on the motion?

11 CHAIRMAN ROBERTI: Yes, Senator Mello.

12 SENATOR MELLO: I think Senator Craven indicated they're
13 merely concerns, but if you read some of the sentences, and
14 there's a letter from Alan Strachan:

15 "I am writing to recommend the
16 removal of Sarah Flores from the Board of
17 Behavioral Science Examiners Task Force
18 for the evaluation of equivalent degrees
19 for MFCC licensure."

20 Then he goes on to state reasons.

21 I have another one from Stephanie Solomon:

22 "Dear Senator Roberti,

23 I am writing to ask that you not
24 confirm the current members of the Board
25 of Behavioral Examiners should their
26 appointments be questionable."

27

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1 I think what we're faced with here is 21 letters in the
2 file, more from just individuals. They are from the Southern
3 California Therapy Association, Northern California Therapy
4 Association and many other groups and individuals, and apparently
5 you haven't seen the letters.

6 One of the questions I was going to ask you is whether
7 you did see the letters or have access to them so you can comment
8 on them.

9 I think they go more than just expressing concern. Some
10 of them are calling for outright removal, which we do not have
11 that power; we have the power to fail to confirm.

12 All I'm asking in this motion to the Committee is to
13 allow us members to review these letters and to look further into
14 these letters of protest, and then come back at a future meeting
15 in January and make a decision at that point.

16 I just wanted to make the point that they were more than
17 just concerns. If I had more time to read 21 letters, I'd go
18 into more detail, but unfortunately we don't.

19 CHAIRMAN ROBERTI: On Mr. Alan Strachan's letter, he
20 does call for the removal of Sarah Flores; however, in
21 enumerating why he seems to indicate that he does not agree with
22 the interpretation of the regulations.

23 But once again, it seems to get to that same point that
24 this Board doesn't seem to be interpreting the regulations the
25 same way the previous Board has, but I don't see any specifics in
26 the letters about what the problem is except that the Board's not
27 following stare decisis, but I don't know whether the Board of
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1 Behavioral Examiners is under any obligation to do so, except
2 interpret the law as they see it.

3 And, she has indicated that she's willing to work with
4 us in making changes where she seems to think that those changes
5 are warranted.

6 SENATOR DOOLITTLE: Call for the question.

7 CHAIRMAN ROBERTI: Senator Doolittle calls for the
8 question. Senator Mello's motion is before us, and that is to
9 put the confirmation over to the first Rules Committee meeting in
10 January.

11 Secretary will call the roll.

12 SECRETARY WEBB: Senator Doolittle.

13 SENATOR DOOLITTLE: No.

14 SECRETARY WEBB: Senator Mello.

15 SENATOR MELLO: Aye.

16 SECRETARY WEBB: Senator Petris.

17 SENATOR PETRIS: Aye.

18 SECRETARY WEBB: Senator Craven.

19 SENATOR CRAVEN: No.

20 SECRETARY WEBB: Senator Roberti.

21 CHAIRMAN ROBERTI: No.

22 The vote is two to three, the motion fails.

23 Now there is a motion before us by Senator Craven to
24 move Ms. Flores' confirmation to the Floor with recommendation
25 for confirmation.

26 Secretary will call the roll.

27 SECRETARY WEBB: Senator Doolittle.

28

1 SENATOR DOOLITTLE: Aye.

2 SECRETARY WEBB: Senator Mello.

3 SENATOR MELLO: No.

4 SECRETARY WEBB: Senator Petris.

5 SENATOR PETRIS: No.

6 SECRETARY WEBB: Senator Craven.

7 SENATOR CRAVEN: Aye.

8 SECRETARY WEBB: Senator Roberti.

9 CHAIRMAN ROBERTI: Aye.

10 The vote is three to two; confirmation is recommended to
11 the Floor.

12 MS. FLORES: Thank you.

13 CHAIRMAN ROBERTI: Next is William J. Johnston, Member
14 of the California State Lottery Commission.

15 MR. JOHNSTON: How are you, Senator.

16 SENATOR CRAVEN: Got your credentials in order?

17 CHAIRMAN ROBERTI: We will ask you the same question we
18 ask all the Governor's Appointees, and that is why you feel
19 you're qualified to assume this position.

20 MR. JOHNSTON: Thank you, Senator.

21 As you know, it was my privilege to serve as
22 Superintendent of the Los Angeles Unified School District for ten
23 and a half years. The budget of the school district at the time
24 that I left was 1.8 billion. It's anticipated that the budget
25 eventually for the lottery will be in this range. There are many
26 estimates around.

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1 I believe that this background and this experience will
2 help me to review the procedures and the operations and the
3 administration of this program.

4 I do represent public education on the Commission, and
5 I'm proud to have that assignment.

6 CHAIRMAN ROBERTI: Is there any opposition to Mr.
7 Johnston's confirmation? Are there any questions?

8 SENATOR MELLO: Move him out.

9 CHAIRMAN ROBERTI: Senator Mello moves Mr. Johnston's
10 confirmation be recommended to the Floor.

11 When is the day, the first day we'll be able to tell our
12 constituents they can buy a ticket?

13 MR. JOHNSTON: It's 12:30 on October the third.

14 CHAIRMAN ROBERTI: Is that a promise?

15 MR. JOHNSTON: Yes, sir.

16 CHAIRMAN ROBERTI: Secretary will call the roll.

17 SECRETARY WEBB: Senator Doolittle.

18 SENATOR DOOLITTLE: Aye.

19 SECRETARY WEBB: Senator Mello.

20 SENATOR MELLO: Aye.

21 SECRETARY WEBB: Senator Petris.

22 SENATOR PETRIS: Aye.

23 SECRETARY WEBB: Senator Craven.

24 SENATOR CRAVEN: Aye.

25 SECRETARY WEBB: Senator Roberti.

26 CHAIRMAN ROBERTI: Aye.

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1 The vote's five to nothing; confirmation is recommended
2 to the Floor.

3 Congratulations.

4 Laverta Montgomery, Member of the California State
5 Lottery Commission.

6 Ms. Montgomery, we'll ask you the same question we've
7 asked the others: why you feel you're qualified to assume this
8 position.

9 MS. MONTGOMERY: I feel that I'm qualified because of
10 the work, my many years of work in government, my work in the
11 area of public finance, and my consciousness of protecting that
12 public dollar and the need for many people in this state or all
13 people in this state to be represented in something as important
14 as the lottery.

15 CHAIRMAN ROBERTI: Very good.

16 Is there any opposition to Ms. Montgomery's appointment
17 to the Lottery Commission? Any questions from the membership?

18 SENATOR CRAVEN: Move Ms. Montgomery.

19 CHAIRMAN ROBERTI: Senator Craven moves Ms. Montgomery's
20 confirmation be recommended to the Floor.

21 Secretary will call the roll.

22 SECRETARY WEBB: Senator Doolittle.

23 SENATOR DOOLITTLE: Aye.

24 SECRETARY WEBB: Senator Mello.

25 SENATOR MELLO: Aye.

26 SECRETARY WEBB: Senator Petris.

27 SENATOR PETRIS: Aye.

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1 SECRETARY WEBB: Senator Craven.

2 SENATOR CRAVEN: Aye.

3 SECRETARY WEBB: Senator Roberti.

4 CHAIRMAN ROBERTI: Aye.

5 The vote is five to nothing; confirmation is recommended
6 to the Floor.

7 MS. MONTGOMERY: Thank you very much.

8 CHAIRMAN ROBERTI: Kennard W. Webster, Member of the
9 California State Lottery Commission.

10 Mr. Webster, we'll ask you the same question: why you
11 feel you're qualified to assume this position.

12 MR. WEBSTER: The law required a CPA on the Commission;
13 I'm the CPA.

14 I've had 30 years in public practice, about 10 in
15 auditing tax and 20 in management consulting. The management
16 consulting has been involved with computer operations, designing
17 management operations systems, organization studies and that sort
18 of thing, which is quite useful, particularly in a start-up
19 situation.

20 CHAIRMAN ROBERTI: Is there any discussion or debate?
21 Any opposition?

22 SENATOR CRAVEN: Move Mr. Webster.

23 CHAIRMAN ROBERTI: Senator Craven moves Mr. Webster's
24 confirmation be recommended to the Floor.

25 Secretary will call the roll.

26 SECRETARY WEBB: Senator Doolittle.

27 SENATOR DOOLITTLE: Aye.

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1 SECRETARY WEBB: Senator Mello.

2 SENATOR MELLO: Aye.

3 SECRETARY WEBB: Senator Petris.

4 SENATOR PETRIS: Aye.

5 SECRETARY WEBB: Senator Craven.

6 SENATOR CRAVEN: Aye.

7 SECRETARY WEBB: Senator Roberti.

8 CHAIRMAN ROBERTI: Aye.

9 The vote is five to nothing; confirmation is recommended
10 to the Floor.

11 Congratulations.

12 (Thereupon this portion of the Senate
13 Rules Committee hearing was terminated
14 at approximately 11:45 P.M.)

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CERTIFICATE OF SHORTHAND REPORTER


I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

12th day of September, 1985.


EVELYN MIZAK
Shorthand Reporter

